Supreme Court, U.S.
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No

In The Supreme Court of the United States

Johnny L. Milligan and Carolyn A. Milligan,
Petitioners,

v.

Equity Residential Properties, *et al*
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals For the Fourth Circuit

PETITION FOR WRIT OF CERTIORARI

Johnny L. Milligan,
Attorney Pro Se
Carolyn A. Milligan,
Attorney Pro Se

8111 Dumont Drive
Apartment 203
Vienna, VA 22180
(703) 645-8187 Hm Ph
(202) 442-5077 Day Ph

Petitioners

QUESTIONS PRESENTED

This Petition involves the focus question when two parties sue each other with sequential law suits and the constitutional right of full faith credit and recognition being given to the prevailing party's judgment by another court.

1. **Question**: The first of two law suits between the parties revealed undisputed fraud upon the court and other misconduct, so much so that the first law suit was set-aside on the basis of fraud. The question is: Since the first law suit had been adjudicated in the Respondents' favor and later reversed in the Petitioners' favor on the basis of fraud, how best should that fraud upon the court and misconduct from the first law suit be proven in the second suit on Petitioners' Rule 60(b)(3) motion for relief, after summary judgment for the second suit has been rendered to the perpetrators of the fraud in the first law suit?

2. **Question**: With respect to Article IV, § I of the U.S. Constitution, full faith and credit shall be given to all judicial proceedings throughout the land, the question is: When there are two consecutive law suits between both parties, is it constitutional for lower courts to grant summary judgment for absence of factual disagreements

within the case at bar, while not extending full credit and not fully incorporating all previously admitted record-evidence, facts and circumstances from the previously adjudicated case between both parties, particularly when the non-moving party is pleading the undisputed facts of the entire judicial proceedings which reveal fraud upon the court and thus require mandatory preclusion of any assistance from the courts for the offender?

3. **Question**: Petitioners have already clearly and convincingly proven fraud upon the court and other misconduct in the first of two consecutive law suits between both parties, and the set-aside orders and evidence used to prove thereof were uncontested by the Respondents in the first instance, the question is: When the Petitioners plead the entire proceedings and record-evidence of the initial fraudulent law suit between the parties with particularity per Fed R. Civ Proc 9 during the second law suit, do lower courts violate USC Title 28, Part V, Chapter 115, § 1738 for dismissing a well-pleaded Rule 60(b)(3) motion for relief for fraud upon the court, on the basis of "no proof or no evidence", when USC Title 28, Part V, Chapter 115, § 1738 states "the records and judicial

QUESTIONS (Continued)

proceedings of any court ....shall be proved....by the attestation of the clerk and the seal of the court annexed"?

PARTIES TO THE PROCEEDINGS

1. Equity Residential Properties Management Corp.;
2. Equity Residential Properties, Trust;
3. EQR Woodside Vistas, Inc.; and
4. Woodside Apartments

Cameron S. Matheson, Counselor of Record
for the Respondents
Law Firm of LeClair Ryan, PC
707 East Main Street, 11th Floor
Richmond, VA 23219
(804) 916-7126 Ph
(804) 783-2003 Direct Ph

James Alvin Murphy, Law Firm of LeClair Ryan, PC
707 East Main Street, 11th Floor
Richmond, VA 23219
(804) 916-7126 Ph

Rebecca E. Kuehn, Law Firm of LeClair Ryan, PC
225 Reineker Lane, Suite #700
Alexandria, VA 22314
(703) 684-8007 Ph

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[1] The actual Judgment Order is page 3 in the judicial record of the Fairfax Action, which is a Form DC-421 with the Judge's signature. The entire 18-page Fairfax Action can be found at Alpha Tab C in any one of the 5 Evidence Binders between the District Court and the Circuit Court.

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APPENDIX B:

Consent Order (CFN C2001-009741 Judgment Set-Aside in Favor of the Milligans)

APPENDIX C:

Petitioners' *Amended Complaint*, Feb 10, 2003.

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USCA Order, 03-2004, November 7, 2003

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USCA *Unpublished Per Curiam & Judgment Orders*, 04-1263, April 22, 2004

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APPENDIX I:

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OPINIONS AND JUDGMENT BELOW

1. CFN C2001-009741, *Equity Residential Properties M/A Woodside Apartments, Plaintiffs v. Jonny (sic) Milligan, Carolyn Milligan, Defendants*, Fairfax General District Court, Fairfax VA (May 2001)[2] (See the Form DC-421 page conversion of the Fairfax Action at Pet. App. A). Initially Ruled in Favor of Equity Residential on May 11, 2001.
2. CFN C2001-009741, *Equity Residential Properties M/A Woodside Apartments, Plaintiffs v. Jonny (sic) Milligan, Carolyn Milligan, Defendants*, (See the 2-page Consent Order at Pet. App. B). Reversed in the Milligans' (the Petitioners') favor on August 13, 2001 after Petitioners' undisputed evidence showed Equity Residential used both fraudulent evidence and a fraudulent testimony to secure the judgment (Fraud Upon the Court)
3. 02-CV-1709, *Johnny L and Carolyn A Milligan v. Equity Residential Properties, et al*, Petitioners subsequently filed suit against Respondents on

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[2] The actual Judgment Order is page 3 in the judicial record of the Fairfax Action, which is a Form DC-421 with the Judge's signature. The entire 18-page Fairfax Action can be found at Alpha Tab C in any one of the 5 Evidence Binders between the District Court and the Circuit Court.

November 21, 2002 in the US District Court for the Eastern District, Alexandria, VA. The subsequent suit was dismissed on January 28, 2003 pursuant to Respondents' Rule 12 Motion. Leave was granted for Petitioners to re-file an Amended Complaint by February 10, 2003.

4. 02-CV-1709, *Johnny L and Carolyn A Milligan v. Equity Residential Properties, et al*, Petitioners filed *Amended Complaint* on Feb 10, 2003 (at Pet. App. C). The *Amended Complaint* alleged violations of the Fair Housing Act, Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988, 42 U.S.C § 3601, *et seq*; and allegations for violations of the Virginia Fair Housing Laws for: discriminatory refusal to rent; for discriminatory advertising, statements, and notices; and for discriminatory terms, conditions, privileges, or services and facilities. The *Amended Complaint* also alleged violations of the Fair Credit Reporting Act, 15 U.S.C § 1681 *et seq.* for: maliciously and willfully reporting knowingly false information to credit bureaus; and for illegally obtaining a credit report under false pretenses. The *Amended Complaint* also alleged Breach of Contract (Virginia Leasing Agreement); malicious prosecution; and abuse of judicial process.

5. 02-CV-1709, *Johnny L and Carolyn A Milligan v. Equity Residential Properties, et al*, Most of the allegations contained in Petitioners' *Amended Complaint* were dismissed in favor of Equity Residential on *Orders* dated March 14, 2003; and Summary Judgment was entered on remaining allegations in favor of Equity Residential on *Orders* dated June 19, 2003.

6. 03-2004, *Johnny L and Carolyn A Milligan v. Equity Residential Properties, et al*, Petitioners submitted Motion for Appeal to the US Court of Appeals for the Fourth Circuit, Richmond, VA on August 6, 2003 showing the record containing fraud from the Fairfax Action and mistakes on the Federal Action (at Pet. App. D). Petitioners' Motion was dismissed per Fed R. App Proc 4(a) in favor of Equity Residential on November 7, 2003.

7. 02-CV-1709, *Johnny L and Carolyn A Milligan v. Equity Residential Properties, et al*, Petitioners submitted Motion for relief per Fed R. Civ Proc 60(b)(3) January 30th 2004 to the US District Court for the Eastern District, Alexandria, VA for Fraud Upon the Court. Petitioners' Motion was denied "for the reasons stated in the Defendants' brief," on Feb 26, 2004. (See Pet. App. E; USDC *Orders*, dated Feb 26, 2003) (Def Brief stated no evidence)

8. 04-1263, *Johnny L and Carolyn A Milligan v. Equity Residential Properties, et al*, Petitioners submitted District Court Case No 02-CV-1709 to the US Court of Appeals for the Fourth Circuit, Richmond, VA on March 22, 2004. The Circuit Court issued an Unpublished Per Curiam, which "Found No Error and Affirmed" the District Court's ruling in favor of Equity Residential on April 22, 2004. (Pet. App. F).

9. 04-1263, *Johnny L and Carolyn A Milligan v. Equity Residential Properties, et al*, Petitioners submitted timely Motion for Rehearing En Banc to the US Court of Appeals for the Fourth Circuit, Richmond, VA (at Pet. App. G).

10. 04-1263, *Johnny L and Carolyn A Milligan v. Equity Residential Properties, et al*, Petitioners' En Banc hearing was denied on May 28, 2004. Fourth Circuit issued its Mandate on June 7, 2004. (See *Mandate* at Pet. App. H)

JURISDICTION

This Court has jurisdiction per Title 28, Part IV, Chapter 81, § 1253 - Direct appeals from decisions of three-judge courts. The *Opinion* of the Circuit Court was issued April 22, 2004 and a rehearing was denied on May

28, 2004. The 90-day filing deadline from the date of final judgment has been calculated for this *Petition* to be submitted not later than August 26, 2004.

STATEMENT OF THE CASE

The Fairfax General District Court Case

1. This is the first of two actions between both parties. The facts are hereby disclosed and proven by the record of the Fairfax Action and the facts and circumstances are undisputed by both parties. The circumstances and facts of the Fairfax Action established fraud upon the court. (See Form DC-421 page conversion of the Fairfax Action: CFN C2001-009741, *Equity Residential Properties M/A Woodside Apartments, Plaintiffs v. Jonny (sic) Milligan, Carolyn Milligan, Defendants*, Fairfax General District Court, Fairfax VA (2001) at Pet. App. A).

2. On April 17, 2001, Respondents filed an eviction action against the Petitioners in Fairfax County General District Court, City of Fairfax, Virginia, on the basis of unpaid rent. *Id* (See also USDC *Mem. of Opin*, Pp 5-6, March 14, 2003). At the time the action was filed, Petitioners had not paid rent.

3. On April 22 and April 28, 2001 respectively, after Respondents filed the action, the Petitioners paid all rent, utilities fees, and other associated fees. (See USDC *Mem. of Opin*, Pp 5-6, Mar 14, 2003; see also Plaintiffs' *Amended Complaint*, February 10, 2003, Pp 3-4 at Pet. App. C). The Petitioners were issued 2 receipts from Respondents on April 22 and April 28, 2001, respectively, showing that all rent and fees were paid in full. *Id.* The two payments Respondents received from the Petitioners totaled $1298.61, to cover rent in the amount of $1035.00 for April 2001 and other associated fees. *Id.* Respondents agreed to terms with Petitioners to dismiss the suit if monies were paid in full prior to the court date. (See USDC *Mem. of Opin*, Pp 5-6, March 14, 2003; see also Plaintiffs' USDC *Mem of Support for Relief*, Jan 30, 2004, ¶ b, p 5)

4. On the eve of the eviction proceeding, May 10, 2001, Respondents made certain and confirmed Petitioners paid all monies by auditing the Petitioners' rental payment records. (See Plaintiffs' *Amended Complaint*, February 10, 2003, p 6 at Pet App C) The May 10th audit showed a discrepancy of only $5.00 (five dollars). *Id* The Petitioners paid the five dollars by close-of-business on May 10, 2001 with a money order. *Id.*

5. On May 11, 2001, the date of trial for the eviction proceeding, Respondents, (Plaintiffs in the Fairfax Action) satisfied their mandatory evidence requirement by affirming the signed sworn affidavit, which had been filed and admitted before trial on April 17, 2001, and providing verbal testimonies from the Respondents' landlord and the Respondents' attorney. During trial, the Respondents fraudulently alleged that the Petitioners owed $1035.00, among other fees, for unpaid rent for April 2001. (See Plaintiffs' USDC *Mem of Support for Relief*, Jan 30, 2004, ¶ b, p 6; see also Form DC-421 page conversion of the Fairfax Action: CFN C2001-009741, *Equity Residential Properties M/A Woodside Apartments, Plaintiffs v. Jonny (sic) Milligan, Carolyn Milligan, Defendants*, Fairfax General District Court, Fairfax VA (2001) at Pet. App. A)). On May 11, 2001, (the eviction proceedings) was adjudicated in favor of Respondents. The basis for the judgment was unpaid rent. (See USDC *Mem. of Opin*, p 6, March 14, 2003; see also Form DC-421 page conversion of the Fairfax Action: CFN C2001-009741, *Equity Residential Properties M/A Woodside Apartments, Plaintiffs v. Jonny (sic) Milligan, Carolyn Milligan, Defendants*, Fairfax General District Court, Fairfax VA (2001) at Pet. App. A)

6. At the eviction trial on May 11, 2001, the sole legal question was whether or not the defendants had paid rent in the amount of $1035.00, and other fees for the month of April 2001 as of the date of the hearing (May 11, 2001).

7. For the Plaintiffs (Respondents in this case at bar) in the Fairfax Action to prevail on a judgment of $1035.00, based on unpaid rent, which had been paid at least 13 days prior to the hearing date, the Plaintiffs in the case did in fact offer necessarily fraudulent testimonial evidence stating that the Defendants owed $1035.00, among other fees. The fraudulent testimonial evidence supported the affidavit, which had been admitted on April 17, 2001, which alleged unpaid rent. The reason the testimony and evidence was fraudulent is because Defendants paid rent and all other fees 13 days prior to the court date. (See USDC *Mem. of Opin*, Pp 5-6, Mar 14, 2003; see also Plaintiffs' *Amended Complaint*, February 10, 2003, Pp 3-5 at Pet App C; see also p. 6 of Plaintiffs' USDC *Mem of Support for Relief*, Jan 30, 2004).

8. As in most eviction cases, the landlords' documentary evidence consists of contingent factual circumstances, which means that the factual circumstances were likely true at one point when the case was filed.

However, due to the contingency of those factual circumstances, when or if all alleged outstanding debt is paid by the tenant, the landlords' documentary evidence is then nullified, void and becomes of no effect. In this Fairfax case at bar, when the Petitioners paid all outstanding debt to the Respondents 13 days prior to trial, the landlords' documentary evidence was then nullified, void and had no effect. Over and above, the Respondents' accompanying testimonial "evidence consist[ed] of the testimony of individuals [who…] in fact, [were] perjurers or persons motivated by malice, vindictiveness, intolerance, prejudice, or jealousy." *Greene v. McElroy* 360 US 474 at 4967-97 (1959)

9. After Defendants paid all alleged unpaid rent and other associated fees by April 28, 2001, the Plaintiffs in the case had insufficient evidence to support a claim of outstanding or past due rent in the amount of $1035.00; therefore, the Plaintiffs in the Fairfax case had no reason to continue the case as it was initially petitioned on April 17, 2001. The Plaintiffs in the case without doubt provided materially false statements and false evidence to the fact-finder concerning whether or not rent was paid as of the date of the trial. The false affidavit statement and false verbal testimonies prejudiciously influenced the decision of the fact-finder.

10. After Plaintiffs (Respondents in this case at bar) in the Fairfax Action were awarded judgment, the Respondents never serviced the Petitioners with the judgment. Thus, the Petitioners were ignorant as to the judgment. The Respondents expressed their legal obligation to the Petitioners to dismiss the suit in its entirety if all monies and fees were paid prior to the court date. (See USDC *Mem. of Opin*, Pp 5-6, March 14, 2003; see also Plaintiffs' *Amended Complaint*, February 10, 2003, Pp 3-4 at Pet App C; see also p. 10 of Plaintiffs' USDC *Mem of Support for Relief*, Jan 30, 2004). By not serving the Petitioners with the eviction notice, Respondents violated substantive due process. This violation of the substantive due process clause prevented the Petitioners from even timely contesting the fraudulent judgment on an appeal. Likewise, Respondents never tried to remove the Petitioners from the apartment or tried to enforce the judgment. Respondents deliberately concealed the Fairfax judgment from the Petitioners and deliberately used the false information from the judgment to maliciously report false and erroneous information to the credit bureaus to be posted on their credit reports. (See Plaintiffs' *Amended Complaint*, February 10, 2003, Pp 6, 7, 28, 30, 33-42 at Pet App C; see also Plaintiffs' USDC *Mem of Support for Relief*, Jan 30, 2004, ¶ b, p 5)

11. The Petitioners found out about the Fairfax judgment after applying for apartments. (See *Id* at Pet App C)

12. After the Petitioners found out about the judgment, the Petitioners secured a lawyer and proffered undisputed direct evidence of payment. (See 2 payment receipts totaling $1298.61 in the Evidence Binders of the District Court and Circuit Court; see also USDC *Mem. of Opin*, Pp 5-6, March 14, 2003; see also Plaintiffs' *Amended Complaint*, February 10, 2003, p 8; and p 6 ¶ ***i*** at Pet App C)

13. Nearly 90 days after the Fairfax Action was finalized, On August 2, 2001, the Petitioners filed for a hearing to have Respondent's fraudulently procured judgment set-aside. (See the docket cover page of the page conversion of the Fairfax Action: CFN C2001-009741, *Equity Residential Properties M/A Woodside Apartments, Plaintiffs v. Jonny (sic) Milligan, Carolyn Milligan, Defendants*, Fairfax General District Court, Fairfax VA (2001) at Pet. App. A) On August 9, 2001, the date of the set-aside hearing, the fact-finder reviewed the Petitioners' evidence of payment and that evidence immediately removed all doubts concerning non-payment of rent. (See

the 2-page Consent Order at Pet. App. B). The fact-finder signed the Consent Order on August 13, 2001, after Petitioners' undisputed evidence showed Equity Residential used both fraudulent evidence and fraudulent testimonies to secure the judgment (Fraud Upon the Court) *Id.* The *Petitioners' evidence of* payment was of such influential and convincing character that it immediately removed all doubts as to Respondents' fraudulent allegations of non-payment of rent. (See 2 payment receipts totaling $1298.61 submitted for record as pages 1-2 of Tab A in any one of the 5 Evidence Binders between the District Court and the Circuit Court; see also USDC *Mem. of Opin*, Pp 5-6, March 14, 2003) The evidence - the 2 receipts - also showed that the dates of Respondents' receipt of payment was at least 13 days prior to the May 11, 2001 court date. *Id.* The Petitioners' evidence was so compelling that it impeached Respondents' living witness testimony and sworn affidavit. Since the Respondents issued the 2 receipts of payment to the Petitioners at the times each payment was rendered, it would only seem logical that the evidence of payment shouldn't be questioned or contested by the Respondents – and so, the evidence is uncontested and unquestioned by the Respondents.

14. Finally, after Petitioners made the convincing showing of fraud in order to get the judgment set-aside,

Petitioners did not receive their standard reimbursement of attorneys' fees.

STATEMENT OF THE CASE
The US District Court Federal Case

1. The following undisputed record-evidence and facts concerning the Fairfax Action have been found by the fact-finder and are reflected in the record of the Federal Action in US District Court for the Eastern District, Alexandria, Virginia. The US Court of Appeals for the Fourth Circuit has also affirmed these undisputed facts.

2. Pages 5 and 6 of the District Court *Mem of Opin* dated March 14, 2003 clearly state, and Respondents have not denied, Respondents filed suit against Petitioners and Respondents were awarded a judgment for $1035.00 for unpaid rent against Petitioners in Fairfax County General District Court on May 11, 2001. (See USDC *Mem. of Opin*, Pp 5-6, March 14, 2003. Pages 5-6 of the *Mem of Opin* also state, and Respondents have not denied, Respondents agreed to dismiss the suit if all rent and fees were paid prior to the court date. (See Id) At this instant, the undisputed facts of the District Court's direct findings, as they relate to the Fairfax Action, is sufficient evidence that the Respondents committed extrinsic fraud by

preventing the Petitioners "from fully having their case presented [in the Fairfax Court] because of Equity's false promise to dismiss the suit after payment of all rent and fees." (See pg 5 of *Plaintiffs' Memorandum of Support for Relief of Judgment for Mistakes, Fraud and Fraud Upon the Court*, January 30, 2004, USDC-ED) The Supreme Court says extrinsic fraud is, in part "fraud or deception practiced on him by his opponent, as by keeping him away from court, [by making] a false promise of compromise; or where the defendant never had knowledge of the acts of the plaintiff" (See *Id, at 5*) (quoting *US v. Throckmorton*, 98 US 61, 25 L.Ed. 93.). Thus, summary judgment is not proper because the Petitioners' record-evidence of fraud is such that a reasonable jury must return a verdict for the nonmoving party. Cf. *Anderson v. Liberty Lobby, Inc* 477 US 242, Pp. 247-257

3. Furthermore, the fact that Respondents never serviced the Petitioners on the judgment constitutes due process principles violation. The Petitioners found out about the fraudulent judgment on July 15, 2001, after applying for apartments while reviewing their credit reports. (See *Id* at 50). "Due process principles are principles of fundamental fairness; they are principles of

[long-standing] acceptance and wide acceptability." [3] "The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation." *Cafeteria & Restaurant Workers Union v. McElroy*, 367 US 886, 894-95 (1961)

4. Despite Petitioners' repeated reference to the undisputed facts, circumstances and extensive evidence directly from the record of the Fairfax action in support of the Rule 60(b) motion, the below courts found "no evidence" to show fraud or misconduct on the part of the Respondents. Cf. *Miller-El v. Cockrell* (01-7662) 261 F.3d 445 (2003) Petitioners' extensive court-record evidence of fraud upon the court exceeds two separate thresholds of fraud. *Id.* First, as the fact-finder accounts in its March 14 and June 19, 2003 *Memorandums*, respectively, the Petitioners' *Amended Complaint* exceed the threshold of establishing that the Respondents committed fraud upon the court by Respondents' false promise to dismiss the suit if rent was paid before trial.[4] (See USDC *Mem. of Opin*, Pp

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[3] Courtesy: http://www.rule-of-law.info/quotes.htm, Professor Nathan H. Cogan, The Inherent Power and Due Process Model in Conflict: Sanctions in the Fifth Circuit, 42 SW. L.J., 1020 (1989).

[4] The Supreme Court says extrinsic fraud is, in part "fraud or deception practiced on him by his opponent, as by keeping him away from court, [by making] a false promise of compromise; or where the

5-6, Mar 14, 2003; see also Plaintiffs' *Amended Complaint*, February 10, 2003 at Pet App C). When the Respondents (plaintiffs in the Fairfax proceeding) made a false promise to the Petitioners (defendants in the Fairfax proceeding) to dismiss the suit after all monies and fees were paid prior to the court date, and the Respondents proceeded to accept the judgment based on unpaid rent after rent and other fees had been paid, then the Respondent, for all intents and purposes, committed a fraud upon the court with its acceptance of a judgment based on fraudulent premises. Second, the Petitioners exceed the threshold of showing Respondents committed fraud upon the court by demonstrating Respondents' attorney had a clear legal duty to inform the courts that payment of the alleged outstanding debt had been made and the alleged rent debt obligation of the defendant was satisfied. It cannot be disputed, if Respondents' counsel had advised the court of the 2 payments made by the Petitioners totaling $1298.61 - the full balance of said base rent, fees, and utilities, - such judgment would not have been rendered. At the Fairfax trial, the Respondents' counselor took full advantage of his position as an attorney, and an officer of the court, and took full advantage of the confidence that the court no doubt

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defendant never had knowledge of the acts of the plaintiff" (See *US v. Throckmorton*, 98 US 61, 25 L.Ed. 93.).

reposed in him. Respondents' attorney proceeded to procure a judgment which was wholly unwarranted on the evidence. He thereby perpetrated a fraud upon the court, which resulted in the injury of the Petitioners. (See Plaintiffs' USDC *Mem of Support for Relief*, Jan 30, 2004).

ARGUMENT

1. The Respondents argue, and the below courts agree, that the Petitioners provided no evidence to support the claims of fraud and the record does not support claims either. (See Pet App E & F, Court Orders denying relief).

2. The issue with the below Courts' findings is that both parties were involved in a suit in state court prior to the commencement of this federal action. It is at the state court, particularly the Fairfax County General District Court, Court Rm 2A, Fairfax, Virginia 22030 where all of the facts to support Petitioners' allegations occurred.

3. Federal Rules of Civil Procedures 9 allow litigants to particularly plead entire judgments and judicial proceedings. Federal Rules of Evidence 103(a) states once the court makes a definitive ruling on the evidence and the evidence has been entered into the record, "a party need not renew offer [of proof] to preserve a claim of error for

appeal." *Inselman v. S&J Operating Co.*, 44 F.3d 894 (10th Cir. 1995). The purpose of evidence rule 103 is to allow the trial judge to make an informed evidentiary ruling in the first instance, and also to create an adequate record for appellate review. *Id* The purposes of Rule 9 are to specifically reference with particularity and precision what actually constitutes fraud as defined by this "Court's 'well-settled, common law meaning of 'fraud' is "a misrepresentation or concealment of *material* fact." (***Neder v. United States***, No. 97-1985, US Supreme Court (June 10, 1999)) (See also ***Chambers v. NASCO, Inc.***, 501 US 32, US Supreme Court (1991); and ***Hazel-Atlas Glass Co., v. Hartford-Empire Co***. 322 US 238, US Supreme Court (1944)) This definition must be used as a standard for review for these allegations of fraud.[5]

4. The Respondents successfully argued to the below courts that the Petitioners presented no evidence in support of their Rule 60(b)(3) motion for relief, and the below courts allowed the argument to stand and affirmed the judgment. More importantly, USC Title 28, Part V, Chapter 115, § 1738, ¶ 2 states, in relevant parts:

> "The records and judicial proceedings of any court of any....State,.....shall be proved

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[5] See page 9 of Pet. App. G, *Rehearing Petition*

> or admitted in other courts within the United States.....by the attestation of the clerk and seal of the court.....together with a certificate of a judge of the court....." (USC Title 28, Part V, Chapter 115, § 1738, ¶ 2)[6]

5. The words "clear and convincing evidence" are not mentioned in the statute, in fact, "evidence" is not mentioned at all to prove a judicial act, record or proceeding. Thus, evidence is not a requirement or standard of proof for the judicial record or judicial proceedings review. Again, Respondents' argument for proof, or lack of evidence, will not attest for the contents of the Fairfax judicial record. Only the attestation of the clerk, the seal of that court, and the judge's certificate will prove the record of a proceedings or judicial act. The question remains, how should fraud upon the court and misconduct from the first law suit be proven in the second suit on motion for relief, after summary judgment for the second suit has been rendered to the perpetrators of the fraud in the first law suit? The Petitioners provided the entire 18-page record and the 2-page set-aside orders from the Fairfax proceedings complete with court's stamp and the judge's and clerk's signature.[7]

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[6] The full text of the Statute is set out in the Appendix I

[7] Refer particularly to Exhibit C behind Tab 10 of the Evidence Binders for proof of Defendant's favorable judgment [Item #'s 44 of 4th

6. Respondents successfully argue that all fraud should be proven through the clear and convincing evidence standard. That standard is correct, however, that standard applies to the initial review for fraud, not once the fraud has already been proven and established as the Petitioners have already once proven the fraud in the Fairfax case in order to get the initial judgment set-aside. (See Pet. App. A and B)

7. Pursuant to Article IV, § I of the US Constitution Petitioners have a right to demand that full faith and credit of every element of the prior Fairfax court proceedings be recognized and incorporated into the Federal court's summary judgment deliberations. Article IV, § I of the Constitution states "full faith and credit shall be given....[t]o the public acts, records, and judicial proceedings".[8] The *Baker* ruling states "[a]s to judgments, the full faith and credit obligation is exacting. A final judgment in one State, if rendered by a court with

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Cir Docket, and entry between 49 & 50 of the USDC Docket]. Also, refer particularly to 4th Cir Docket entry entitled: ***Informal appendix filed by Appellant Johnny Milligan, Appellant Carolyn Milligan***, as entered on September 22, 2003 by "cwc" for case number 03-2004 for proof of submission of the Fairfax record.

[8] The full text of this Article of the Constitution is set out in Appendix J.

adjudicatory authority over the subject matter and persons governed by the judgment, qualifies for recognition throughout the land." *Baker, et al. v. General Motors Corp* 522 US 222 (1998) (quoting Matsushita Elec. Industrial Co. v. Epstein, 516 U.S. 367, 373) Certainly, if a ruling qualifies for recognition throughout the land, the Petitioners' set-aside orders and the evidence used for the set-aside, which undeniably showed Respondents committed fraud upon the court in their prior action, qualify for recognition in the same state where the Federal action commenced - Virginia. The undisputed facts, evidence and the circumstances of Fairfax case set-aside, which constituted fraud upon the court, qualified for inclusion into the summary judgment deliberations of the Federal action.

8. If any "public acts, records, and judicial proceedings" are to truly be accorded full faith recognition and credit anywhere in this Nation, the courts must not allow a litigants' argument to substitute for the record or contents thereof – it's the responsibility of the Clerk to attest to what's in the record of a proceeding, not a litigant's responsibility. The content of the adjudicated Fairfax record speaks for itself, despite Respondents' less-than-convincing showing of "undisputed facts" in the Federal case at bar. The controlling maxim of the unclean hands doctrine was the District Courts' guiding principle in

the Federal Action with respects to Respondents' deliberate misconduct in the Fairfax Action. "[T]he guiding doctrine in this case is the equitable maxim that 'he who comes into equity must come with clean hands.'" *324 US 806, 815.* Respondents' hands were unclean coming into the Federal action. Thus, summary judgment was not proper. The Respondents' undisputed actions in the Fairfax case constitute fraud upon the court.

9. Finally, the District Court and the Circuit Court also violated Petitioners' most basic and fundamental rights by denying Petitioners' well-pleaded Rule 60(b)(3) motion for relief on the basis of no proof or evidence. Petitioners precisely and particularly pleaded the records, judicial proceedings, and judgment of another court between both parties. Article IV, § I of the US Constitution states that "the Congress may.....prescribe the manner in which such acts, records, and proceedings shall be proved". The manner in which judicial records and proceedings shall be proven is by the attestation of the clerk and seal of that particular court. (*See USC Title 28, Part V, Chapter 115, § 1738* at Pet. App. I). The Petitioners' proof (or evidence) was the entire 18-page record of the Fairfax Action, as validated by the seal of that court on the filings from both parties and a signature of the judge on the judgment and set-aside orders. Furthermore, under the law of the case

doctrine, an argument that could have been raised in the first appeal but is not made until a subsequent appeal is barred by the law of the case. *McDonald's Corporation v. Marlin Hawkins and Marvine Hawkins*, 93-912, S.W.2d, Supreme Court of Arkansas (December 12, 1994) (quoting: *Willis v. Estate of Adams*, 304 Ark. 35, 799 S.W.2d 800 (1990); *Alexander v. Chapman*, 299 Ark. 126, 771 S.W.2d 744 (1989)). Again, the question remains, is it constitutional for the lower courts to grant summary judgment for the absence of factual disagreements within a case at bar, when there are two consecutive law suits between the parties, without extending full credit and inclusion to the previous law suit within the case at bar, particularly when the non-moving party is pleading the undisputed facts of the entire judicial proceedings which reveal fraud upon the court and thus require mandatory preclusion of any assistance from the courts for the offender? The previous law suit was over turned on the basis of fraudulent evidence and fraudulent testimonies used by the Respondents. The full faith credit and inclusion of the facts and circumstances of the previous law suit would have precluded the summary judgment in favor of the Respondent. Respondents never argued against the Petitioners' evidence, which revealed fraud at the set-aside hearing of the Fairfax Action on August 9, 2001, and

Respondents cannot argue against, or argue the absence of, any evidence now.

REASONS FOR GRANTING THE WRIT

1. This case at bar speaks to the heart of the *Anderson v. Liberty Lobby, Inc* 477 US 242 and Rule 56(c) standards of review with respect to substantive law and the lack of guidance on the undisputed facts from previous cases that are material to the case at bar to preclude movant's entitlement to summary judgment. (See *Id* at p. 247) This Court should use this opportunity to address preclusive circumstances such as these, which will ensure fairness is given to the end of all properly adjudicated cases where a litigant has once sustained the burden of proving the movants' blatant and undisputed misconduct in one or the other of two law suits between both litigants. "The very mission of the summary judgment procedure is to pierce the pleadings and to assess the proof in order to see whether there is a genuine need for trial." (***Notes of Advisory Committee on Rules – 1963 Amendment***; 28 USC Appendix – Rules of Civil Procedures Rule 60, Jan 22, 2002)[9] The Fourth Circuit has so far departed from the intended and acceptable purposes of *Anderson v. Liberty*

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[9] Courtesy: http://uscode.house.gov/uscode-cgi/)

Lobby, Inc 47 US 242 and Rule 56(c) as it upholds an opinion from the district court, which conflicts with the mandatory guiding doctrine of the equitable maxim that 'he who comes into equity must come with clean hands'.

2. This Court should grant writ in order to definitively establish the manner in which previous judicial acts, judicial records, and judicial proceedings must be incorporated into summary judgment considerations, as a matter of constitutional right, especially where two law suits between the parties give rise to full faith and credit issues, and especially since the issue of judicial acts receiving full faith and credit and consideration is so fundamentally grounded within Article IV, § I of the US Constitution. In this particular case at bar, full faith and credit and total consideration of the fraud upon the court showing in the previous judgment between the two litigants would have absolutely precluded the court from rendering judgment in the defendants' favor.

3. This Honorable Court should also grant this writ because this suit also concerns protection and vindication of public interest with significant proportions. This Honorable Court's intervention and supervisory powers are needed to prevent the transgressor from further enjoying the fruits of his inequities and to avert further injury to the public. No

one has the right to trample on the courts. Cf. *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, (1944). This Court should also grant the writ to restore the integrity of the Fairfax County General District Court. Petitioners made a substantial showing of fraud upon the Fairfax Court and were able to get the fraudulent judgment reversed. (See Pet. App. A and B). "It would be a miscarriage of justice if [this Court] turned a blind eye to such abuse of the judicial process." (Justice Stevens' dissenting opinion, *Abu-Ali Abdur'Rahman v. Ricky Bell*, 01-9094 (2002))

CONCLUSION

1. We pray that this Honorable Court will not shut the doors of justice in our faces again. This Petition may have enough flaws to warrant denial of writ, however, Petitioners only seek justice in this matter. Justice has been denied too long already in this case. If this Petition is flawed for whatever reason, we pray that this Honorable Court will give Petitioners a chance to fix the defects of format, rather than denying relief on the merits.

2. This case at bar is truly not about clear and convincing evidence or lack of evidence - it's about full faith credit, national recognition, and enforcement of any judicial proceedings or act, regardless of which court

rendered the judgment. The Federal Court and the Circuit Court must now recognize the Petitioners' judgment set-aside and incorporate that set-aside into their summary judgment deliberations as a matter of Petitioners' substantive constitutional rights. This Petition is about full faith credit, national recognition, and enforcement of any judicial proceedings or act.

3. Finally, Petitioners Johnny L. Milligan and Carolyn A. Milligan have faithfully prayed to God through our Lord and Savior, Jesus Christ, and we now respectfully pray to this Honorable Court to issue a writ of certiorari to review the judgment of the US Court of Appeals for the Fourth Circuit.

Respectfully Submitted;

Johnny L. Milligan,
Attorney Pro Se
Carolyn A. Milligan,
Attorney Pro Se

8111 Dumont Drive
Apartment 203
Vienna, VA 22180
(703) 645-8187 Hm Ph
(202) 442-5077 Day Ph

Petitioners

August 26, 2004

CFN C2001-009741
UNLAWFUL DETAINER

DOCKET ENTRIES

PLTF: EQUITY RESIDENTIAL PROP TRUST
WOODSIDE APARTMENTS
ATTY: SHERMAN & FROMME

DEF: MILLIGAN, JONNY (sic)
MILLIGAN, CAROLYN
ATTY: Pinkowski and Associates

DATE FILED: 4/17/2001 RETURNABLE TO: 5/11/2001

CONTINUED TO	ACTION
8/2/01	M

DATE	PLTF APPR	JUDGES' MEMO	DEF APPR
5/11	y	JXP Poss AF Costs	n
8/2	y	M/G	n

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF THE
COUNTY OF FAIRFAX

EQUITY RESIDENTIAL PROPERTIES TRUST M/A
WOODSIDE APARTMENTS

Plaintiff,

v.

MILLIGAN, JONNY (sic)
MILLIGAN, CAROLYN

Defendant(s).

AFFIDAVIT

STATE OF VIRGINIA

To-Wit

COUNTY OF FAIRFAX

FORM DC-421 (May 11, 2001 Eviction Proceedings Summons)

1. Judgment for the Plaintiff for Possession of property based on **Unpaid Rent** and the Defendant shall be removed from the property based on unpaid rent for April 2001.

2. Judgment for the Plaintiff for rent, in the sum of $1035.00;

3. Judgment for the Plaintiff for interest of 9% from 5/11/01; Judgment for the Plaintiff for $53.00;

4. Judgment for the Plaintiff for $42.00 costs; and

5. Judgment for the Plaintiff for $300.00 attorney's fees.

(See page 3 of Evidence Binder Exhibit C of the Evidence Binder)

VIRGINIA:

IN THE GENERAL DISTRICT COURT OF THE COUNTY OF FAIRFAX

EQUITY RESIDENTIAL PROPERTIES TRUST M/A WOODSIDE APARTMENTS

Plaintiff,

v. Case No. 01-9741

JOHNNY MILLIGAN,
CAROLYN MILLIGAN,

Defendant(s).

CONSENT ORDER

THIS MATTER CAME ON TO BE HEARD this day to vacate the judgment entered in this matter on May 11, 2001; and

IT APPEARING TO THE COURT, from the signatures of each party's counsel here below, that this Order is proper and should be entered; it is therefore

ADJUDGED, ORDERED AND DECREED that the judgment rendered in this matter be and hereby vacated and that this matter is nonsuited.

ENTERED this 13th day of August, 2001

/s/_____
JUDGE

FAIRFAX COUNTY GENERAL DISTRICT COURT STAMP OF THE CLERK/DEPUTY CLERK August 16, 2001

PRAYED FOR:

_____

J. Thomas Fromme, II, Esquire
VSB #12913
Sherman & Fromme, P.C.
10482 Armstrong St.
Fairfax, VA 22030
703-385-8008
Counsel for Plaintiff

SEEN AND AGREED:

_____

James E. Pinkowski, Esquire
VSB #12084
Pinkowski and Associates
3900 University Drive
Suite 200
Fairfax, VA 22030
703-385-0600
Counsel for the Defendents

FAIRFAX COUNTY GENERAL DISTRICT COURT STAMP OF THE CLERK/DEPUTY CLERK August 16, 2001

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

JOHNNY & CAROLYN MILLIGAN

Plaintiffs,

v. Civil Action No. 02-1709-A

EQUITY RESIDENTIAL PROPERTIES TRUST; EQUITY RESIDENTIAL PROPERTIES; WOODSIDE APARTMENTS; EQUITY RESIDENTIAL PROPERTIES MANAGEMENT CORP, EQR WOODSIDE VISTAS, INC, et al

Defendant.

AMENDED COMPLAINT

(Abuse of Judicial Process, Malicious Prosecution, Illegally Obtaining Credit Report Under False Pretenses, Violation of the Fair Credit Reporting Act, Breach of Contract [The Virginia Lease Agreement],

Violation of the Federal Fair Housing Act, And Violation of the State of Virginia Fair Housing Act)

This case comes before the Court on the Plaintiffs' Motion to Replead in accordance with the Court's Memorandum of Opinion dated January 28th, 2003 and to Replead the Amended Complaint against the above named Defendants, not solely against EQR Woodside Vistas, Inc.

Analysis

VIII. Defendants' Assertion that Plaintiffs have Named the Wrong Defendants

Equity Residential Properties, Trust, (Hereinafter "Equity") the Parent Company's former name, was then the Parent Company of Woodside Apartments. Equity is a REIT (Real Estate Investment Trust) Corporation based in Illinois and licensed to do business in the State of Virginia and 36 other States. Of the State of Virginia, Woodside Apartments, located at 7525 Woodside Lane, Lorton, VA 22079, is one of the properties owned, managed, controlled, and operated by then Equity Residential Properties Trust. Equity Residential Properties, the current new name of the Parent Company is still the Parent Company of Woodside as their (Equity's) name has recently changed. According to Virginia State records, EQR Woodside Vistas, Inc. is the name of the apartments registered in the State of Virginia to the Agent Michael W. Solodar with it Corporation in the State of Illinois. EQR Woodside Vista's Virginia State

Corporate ID No. is F118339. The date of this Virginia State ID Certification was July 19th, 1994.

"Woodside Apartments" is/was the name of the apartments when the Plaintiffs assumed possession of residence 7521 Woodside Lane, #33, Lorton, VA 22079 in October 1993 until September 2001. When Plaintiffs initially assumed possession of dwelling, it was managed and owned by Artery Organization/Artery Property. Plaintiffs' most recent Virginia Lease Agreement dated September 7th, 2000 was drawn between Equity Residential Properties Management Corp., and Johnny Milligan and Carolyn Milligan.

The Plaintiffs were residents of Woodside Apartments when the various described violations and allegations took place, therefore, **Equity Residential Properties, Trust**, **Equity Residential Properties, Woodside Apartments**, **EQR Woodside Vistas, Inc**, and **Equity Residential Properties Management Corp**. should all be named as Defendants.

Basis and Background of Complaint

(i), (ii) Abuse of Judicial Process and Malicious Prosecution:

On/or about April 17, 2001, Equity Residential Properties Trust filed for an Unlawful Detainer for Unpaid Rent in the amount of $1035.00 (one thousand thirty five dollars) for the month of April 2001. On/or about April 24, 2001, Equity Residential Properties Trust served Plaintiffs with Summons For Unlawful Detainer for Unpaid Rent in the

amount of $1035.00 (one thousand thirty five dollars) for the month of April 2001. The claim was filed in Fairfax General District Court, Civil Division, Fairfax, VA, was assigned Case File Number CFN C2001-009741, and had Court Return date and time of May 11, 2001 at 9:30 am. (Equity Residential Properties M/A Woodside Apartments v. Jonny (sic) Milligan, Carolyn Milligan). On/or about April 22nd, Plaintiffs paid a partial rent payment of $283.00 (two-hundred eighty-three dollars) for said property with a money order and Plaintiffs received a receipt of payment from Defendant (Ms. Torey Ossman of Woodside Apartments' Management Office). The receipt is dated April 24, 2001. On/or about April 28, 2001, Plaintiffs paid rent for said property in the amount of $1015.61 (one thousand fifteen dollars and sixty-one cents) with a money order. Plaintiffs received a receipt of payment from Defendant (Ms. Torey Ossman of Woodside Apartments' Management Office). The receipt is dated April 30, 2001. Both partial payments for said property totaled $1298.61 (one thousand two hundred ninety-eight dollars and sixty-one cents). According to receipts received by Plaintiffs from Defendant (Woodside's Management Office) and statements/notices given to Plaintiffs by Defendant (Woodside's Management Office), the total amount for rent for April 2001 was settled in its entirety for $1298.61 (one-thousand two-hundred ninety-eight dollars and sixty-one cents) on April 28, 2001.

This settled payment for rent for Unlawful Detainer for unpaid rent for April 2001 was to be PREVENTED and therefore DISMISSED if all rent, arrears, attorney's fees, and late fees were paid at/or before the Court return date and time. **This Prevention, and ultimately, Dismissal of Unlawful Detainer should have been done in accordance with statement/notice given to Plaintiffs by Defendant (Woodside's Management Office) and pursuant to VA Code § 55-243**. Plaintiffs paid all rent, arrears, attorney's fees, and late fees as confirmed by Plaintiffs' statement/notice of receipt, which was issued to Plaintiffs by Defendant (Ms. Torey Ossman of Woodside's Management Office).

Instead of Defendant dismissing the action, on May 11, 2001, Defendant (Equity Residential Properties, Trust, M/A Woodside Apartments, through Representing Attorney J. Thomas Fromme, II) maliciously, unduly, unjustifiably, unlawfully and unjustly caused judicial process to be issued against Plaintiffs by filing an "Unlawful Detainer" against Johnny and Carolyn Milligan.

This unjust said process for Unlawful Detainer (CFN C2001-009741) was terminated in favor of the Defendant (Woodside Apartments). This action against Plaintiffs (Johnny and Carolyn Milligan) should have been dismissed in accordance with statement/notice given to Plaintiffs by Defendant (Woodside's Management Office) and pursuant to VA Code § 55-243. This judicial action is considered abuse of judicial process because it was initiated

to cause damage to Plaintiffs' credit rating and to establish a [false] right to evict. **This judicial action was not initiated in the interest of achieving justice and was not proper in the regular prosecution of the proceedings.**

Defendant (Woodside's Management Office) performed an audit of the Plaintiffs' account on May 10, 2001 - just one day prior to Defendant's cause of undue process on Plaintiffs. The audit showed an unpaid balance of $5.00 (five dollars). Plaintiffs were served notice of the unpaid balance and rendered the payment of $5.00 (five dollars) in the form of a money order. The Defendant's pre-trial account audit shows Defendant's knowledge of Plaintiffs' account balance having been "paid-in-full" prior to Defendant instituting said process against Plaintiffs. This action was a part of the overall plan to wrongfully evict Plaintiffs because of their Race/Ethnicity as Plaintiffs will demonstrate through testimony in Court and affidavits and statements previously to HUD and the Virginia State Fair Housing Office.

Consequently, Defendant negligently, willfully, maliciously, and fraudulently caused undue judicial process in the form of a civil law suit against Plaintiffs by knowingly and willfully falsifying and misrepresenting evidence to the Court. This judicial action was initiated to cause damage to Plaintiffs' credit rating and to establish a [false] right to evict. Defendants have caused special and opportunistic losses as well as unusual hardship on

Plaintiffs. Plaintiffs have suffered and/or continue to suffer from:

a) Loss of housing opportunities by not being able to rent an apartment from any rental community which uses or used any of the 4 major credit rating agencies for determination of rental eligibility;

b) Loss of opportunity to purchase a home at the lowest possible interest rate via the use of Plaintiffs' Veterans' Administration Guaranteed Home Loan Program. Plaintiffs are US Army Veterans and Mr. Milligan is credited with time served in the Gulf War era;

c) Loss of opportunities to apply for certain jobs with government security clearances that required "favorable credit rating";

d) Loss of opportunity for Mr. Milligan to obtain a car loan when he applied for a car with Auto Express of Manassas, Inc;

e) Loss of opportunity for Mr. Milligan to establish a checking account when he applied at Nations Bank/Bank of America;

f) Humiliation of this erroneous fraudulent credit report entry being reported to 4 major credit reporting agencies;

g) Embarrassment, Mental Anguish, Mental Distress, Lack/Loss of Mental Capacity and Concentration, and Psychological Torment;

h) Physical illnesses such as stomach ulcerative infections, extreme menstrual durations and menstrual pains, and hormone imbalances associated with undue stress, which

resulted in medical treatment and unnecessary doctor's visits, by Mrs. Milligan caused by Defendants' actions.

i) And secondarily, the Unnecessary Financial Burdens of having to secure legal counsel to correct the wrongs of the Defendant;

In 1999, The US Supreme Court addressed the meaning of the terms "malice" and "reckless indifference" as they relate to the standard for award of punitive damages in the Title VII context. See Kolstad v. American Dental Association, 527 US 526, 119 S. Ct. 2118, 114 L. Ed. 2d 494 (1999). The Court stated that "'malice' or 'reckless indifference' pertain to the [defendant's] knowledge that it may be acting in violation of federal law, ***not*** its awareness that it is engaging in discrimination." **In this case, Defendant had knowledge it was engaging in both Discrimination and breaking Federal Laws**. In the Title VII context, it is sufficient that a defendant "discriminate in the face of a perceived risk that its actions will violate federal law to be liable in [civil] punitive [and compensatory] damages." Id. at 2125.

Defendants' actions towards Plaintiffs were deliberate, calculated, and without regard for the interest of justice and without regard for the interest of Plaintiffs. US v. Gritz Brothers Partnership, In Chambers, the Supreme Court concluded that a Court may asses attorney's fees against a party who has "'acted in bad faith, [acted] vexatiously, [acted] wantonly, or [acted] for oppressive reasons'" or "if a Court finds 'that fraud has been practiced

upon it, or that the very temple of justice has been defiled.'" Chambers, 111 S. Ct. at 2133 (citations omitted). Therefore, as a direct and proximate result of Defendant's willful, unjustifiable and negligent actions against Plaintiffs, Plaintiffs seek compensatory damages and punitive damages **along with reasonable Attorneys' fees** for special losses and unusual hardship suffered as a result of the Defendants' malicious prosecution and abuse of judicial process.

(vi) Violation of the Federal Fair Housing Act and Violation of the Virginia State Fair Housing Act

References:

a) Page 10 of the Court's Memorandum of Opinion, dated January 28th, 2003, which authorizes Plaintiffs to Replead an Amended Complaint against the above named Defendant(s).

b) Paragraph 2 of the Virginia State Fair Housing Office Letter, (No Subject Given) (REB File No. 2002-02355 and HUD File No. 03-02-0076-8), dated September 13, 2002, which give Plaintiff notice of right to commence a civil action against Defendant for Violation of the State Fair Housing Act pursuant to the Code of Virginia § 36-96.18(B).

c) US Department of Housing and Urban Development (HUD) letter, Subj: Housing Discrimination Complaint [Milligan, Johnny and Carolyn v. Woodside Apartments], HUD Case File No. 03-02-0076-8, dated January 23, 2002.

d) The Federal Fair Housing Act (The "Act"), 42, USC §3600-3620 *et. al.*

e) The Civil Rights Act of 1968, as amended

Defendant discriminated against Plaintiffs by discriminatory refusal to rent and ultimately evicting Plaintiffs on the basis of Race and Ethnicity. Defendant discriminated against Plaintiffs in the terms, conditions, privileges, services and facilities of a rental on the basis of Race and Ethnicity. Defendant discriminated against Plaintiffs on the basis of Race and Ethnicity and made a verbal discriminatory remark.

Defendants' refusal to renew lease of Plaintiffs and Defendants' cause for malicious and undue process, which resulted in the eviction of Plaintiffs, was motivated by Race. The Defendant is in violation of the Federal Fair Housing Act (The "Act"), 42, USC §3604(a), which prohibits refusal to rent on the basis of Race and in violation of the State Fair Housing Act pursuant to the Code of Virginia § 36-96 *et seq*. Under Federal Rules of Evidence, Rule 803(1), the following sworn statement (previously submitted to HUD and the Virginia State Fair Housing Office) is hereby submitted:

The following statement was previously submitted by the Plaintiffs to HUD and the Virginia State Fair Housing Office for investigation. It is hereby being submitted in support of the allegations of "discriminatory refusal to rent".

The statement is Mr. Milligan's actual account of events that happened from June 12, 2001 through July 10, 2001.

Mr. Milligan's Statement of Events leading to receipt of Notice Forbidding Trespassing.

On Saturday, June 16, 2001 at 10:30 am, Mr. Milligan, an 8-year residential occupant, went to the housing office of Woodside Apartments, located at 7525 Woodside Ln, Lorton, VA to retrieve a copy of the Milligan's occupancy/residence file. Mr. Milligan had previously requested this file from Torey Ossman, the assistant property manager, on Tuesday, June 12, 2001.

The leasing consultant on duty, Rachel Mankey, greeted Mr. Milligan. Mr. Milligan informed Ms. Mankey that he was there to pick up the Milligan occupancy/residence file Torey Ossman said she would have prepared and waiting for him. Ms. Mankey retrieved the Milligan occupancy/residence file from the file drawer and searched through it for the copy. Ms. Mankey then told Mr. Milligan that there was no copy here and she didn't know of such request because Torey left no

instruction for her to do so. She also stated that she wasn't sure if he could have a copy of the file. Consequently, Rachel Mankey called Torey Ossman for further instructions regarding the copy of the file; Torey was unavailable and Rachel left a voice message for Torey to call her back with further instructions regarding the request. This call was done in the presence of Mr. Milligan in the reception area.

Rachel Mankey said to Mr. Milligan that there is one other person she could call for an immediate response and further clarification. Ms. Mankey then took the Milligan's occupancy/residence file with her into Gerri Cook's private office, which happens to be the property manager's office, and called the property manager, Gerri Cook, from the private office. The door was closed and Ms. Mankey's tone was reduced to a whisper as to prevent Mr. Milligan from hearing the conversation concerning the receipt of the Milligan's files.

After the conversation terminated between Gerri and Rachel she returned to the front lobby area where Mr. Milligan was waiting and audaciously stated that Gerri said Mr. Milligan could ONLY have copies

of documents with his signature on them. This means that he could only have copies of the previously signed 8 lease agreements. He could have absolutely nothing else.

Mr. Milligan told her that he already has copies of those items; he gets copies of them each time he renews a lease. Rachel Mankey then told Mr. Milligan that Gerri said that if there was a problem with this Mr. Milligan would have to return on Monday, June 18, to take this matter up with her personally. Mr. Milligan stated that there was a big problem with that and emphatically stated that was totally non-satisfactory and he would follow-up and take action on Monday. Mr. Milligan left the housing office without a copy of the file.

Mr. Milligan called the Equity Properties main office in Chicago, IL on Monday morning June 18, and spoke with Ms. Stephanie of the legal department and furiously explained the situation and events that had occurred. Mr. Milligan stressed how each request for the copy of the file was being met with increasing resistance from Ms. Gerri Cook. Mr. Milligan further expressed his concerns about allegations of a cover-up or conspiracy of some sort

conducted by Ms. Cook and the Woodside Staff because of her unwillingness to render the file he and Ms. Milligan had requested more than 3 times previously. Ms. Stephanie said she would call the Woodside office and get to the bottom of this and there will be follow-up with Mr. Milligan on this matter that day.

Within five minutes after Mr. Milligan terminated the call from the main headquarters with Ms. Stephanie, Torey Ossman, the assistant property manager, called Mr. Milligan with an explanation for his non-receipt of the file. Torey told Mr. Milligan that Ms. Cook didn't mean I couldn't have a copy of the file; she meant that she wanted to be present when I received the copy of the file so that there's no misunderstanding. Torey stated Gerri's message through Rachel Mankey was mis-interpreted and Ms. Cook didn't say I couldn't have a copy of the file. Mr. Milligan told Torey the conversation between Ms. Mankey and himself was the way he described it to Ms. Stephanie and what ever she is led to believe is her choice. Mr. Milligan also asked Torey what was the reason for all of the delays. Mr. Milligan

stated he requested the file from her (Torey) personally on June 12, he stopped by on June 16, and it is now June 18 and Mr. Milligan still didn't have a copy of the file. Mr. Milligan then asked Torey when would be a good time for him to stop by and pick up the file. Torey said she would personally have the file ready for him by the close-of-business today, June 18. Mr. Milligan said he would leave work early enough to pick up the file before the office closed for the day.

Mr. Milligan arrived at the housing office at 7525 Woodside Lane between 5:15 and 5:30 pm on June 18, 2001. Ms. Ossman was still in the process of copying the file he requested. Ms. Ossman asked Mr. Milligan if he wanted copies of a particular document and Mr. Milligan impatiently responded and indicated that he wanted a copy of the entire file. Ms. Ossman told Mr. Milligan that he couldn't have any Woodside specific communiqué between Woodside staff pertaining to Woodside business or business practices. Mr. Milligan's response was that he wanted a copy of the entire file and Ms. Stephanie of the Chicago headquarters said he could have a copy.

Ms. Ossman finished copying the portion of the file she wanted him to have, obviously omitting the portion Gerri instructed her to omit, and handed a stack of papers to Mr. Milligan. She asked if he wanted a paper clip; Mr. Milligan said no and received the documents and exited the office.

On Saturday, July 7, 2001, Mr. Milligan entered the Woodside Property Management office again to retrieve a copy of the entire file. Mr. Milligan discovered the file he had requested was incomplete after assembling the copy of the file in date order and finding time frame gaps which didn't cover the 8-year residency period for which he has resided at Woodside.

Again, on July 7, Ms. Rachel Mankey [a White Female] was on duty and there was also a [White] Male leasing clerk on duty with her. Mr. Milligan stated he was there to pick up a copy of the missing pages to the occupancy/residence file. Mr. Milligan let Ms. Mankey know that he had permission from the Chicago main office to get a copy of the file and Mr. Milligan politely stated to Ms. Mankey that she could go back into the private office and call Gerri

and verify this information. Mr. Milligan stated he was willing to wait in the office while the phone call and copying process took place.

Ms. Mankey's response to Mr. Milligan was that she was not going to give me a copy of the file and referenced the last conversation (June 16) regarding this matter. She said Gerri said I could only have documents with my signature on them. Her demeanor on this issue was very stern, harsh, and arrogant as she flat out refused to deliver the documents request by Mr. Milligan. Mr. Milligan responded be emphasizing that he was going to leave now and if they wanted to say anything about him they could do so after he left.

Mr. Milligan left the office only to return thirty seconds later and as he entered the building he said you could stop talking now; I've returned. Ms. Mankey said no we we're talking about lunch. Mr. Milligan requested 4 pool passes for summer use for the members of his family. The Male leasing clerk assisted Mr. Milligan with the request and as the clerk searched for the Milligan residency file he was unable to locate it. He asked Ms. Mankey if she knew

where the file was and she said the file is maintained separately. The information was provided for the pool passes and the pool passes were completed and rendered to Mr. Milligan by the Male leasing clerk.

Again, Mr. Milligan stated he was about to leave and if they wanted to talk about him they could do so after he left. Both the Male clerk and Rachel playfully said no, they don't do that kind of stuff. Mr. Milligan stood up from the chair and proceeded to the exit and pushed to door in order to sound the alarm as if he were leaving - however, Mr. Milligan didn't leave. Mr. Milligan stood behind the wall out of view of both Rachel and the Male clerk who was on duty. As they both thought I was gone, Rachel began using profane, inflammatory and racial language referencing the situation which had just taken place and was about to inform the Male clerk of the previous encounter regarding the copies of the file. Rachel Mankey's exact words were:

"That Nigger came down here with that same shit last month; he's just mad because his ass is being evicted." (Emphasis Added)

The Male clerk stood up from his desk and walked around to the front of the desk and saw me standing there behind the wall listening to every word. I shook my head from left to right and put my right index finger to my lips in a vertical position indicating for him to be quiet and don't give away my position. The male clerk was shocked to see me standing there and even more shocked to know that I was eavesdropping on their conversation.

The Male clerk tried to queue Rachel that there was an eavesdropper in the building by smiling and blinking at her; however she didn't not pick up on the queue and continued talking. Rachel Mankey went on further to say:

"I called Gerri from her boat....."

Eventually, the Male clerk verbally said, "no, I can't do that", once again queuing Rachel that there was an eavesdropper. As he said that, Mr. Milligan knew his position was about to be given away and he was about to be exposed, Mr. Milligan stepped from around the wall much to Rachel Mankey's surprise. Ms. Mankey's reaction to Mr. Milligan's sudden appearance was breathtaking as she gasped

for air because she knew Mr. Milligan had heard every word she said.

The three individuals in the office, the Male clerk, Mr. Milligan, and Ms. Mankey all had a heated conversation as Mr Milligan expressed his viewpoint for the racist remarks and lack of professionalism on the part of Rachel Mankey. The Male clerk and Ms. Mankey stressed their viewpoint to Mr. Milligan for the eavesdropping and snooping. As customers/residence members walked in the office the conversation would end and resume as they departed.

On Monday, July 9, 2001, Mr. Milligan went to the housing office again to get copies of the files. As Mr. Milligan entered the building Ms. Torey Ossman greeted him. Mr. Milligan informed Ms. Ossman that he was in the office on Saturday, July 7 to retrieve a copy of the Milligan residence file, as he was not given a complete copy of the file he requested previously. Ms. Ossman informed Mr. Milligan that as a result of his visit on Saturday, Ms. Gerri Cook has requested all communications to the Woodside staff from him was to be filtered through her. Mr.

Milligan stated he didn't have a problem with that request. Mr. Milligan further asked if Ms. Cook was available for him to discuss this matter and Ms. Ossman said no; however, Ms. Ossman called Ms. Cook for Mr. Milligan to speak with her.

Mr. Milligan informed Gerri that he was in the office on Saturday, July 7 and Rachel absolutely refused to give him a copy of the file he previously requested several times. Mr. Milligan also stated that Rachel must have not been informed of the conversation between him and Ms. Stephanie from the Chicago headquarters. Gerri's response to Mr. Milligan was that Torey had given him a copy of the file and again, Mr. Milligan emphatically stated that he didn't have a complete copy of the file. This fact was further verified by Torey as she stated to Mr. Milligan that there were copies of documents she overlooked and that she would be happy to provide them to him.

Mr. Milligan stated to Ms. Cook that there was only one way to ensure he received a complete copy of the file. Mr. Milligan said that he would call Ms. Cook to schedule an appointment date and time to do a full audit/review of the file. Ms. Cook

agreed to this suggestion and Mr. Milligan terminated the phone conversation.

One day later, Tuesday July 10, between 7:00 pm and 8:00 pm, Virginia State Police Officer Kent Butler served Mr. Milligan at his place of residence with a ***Notice Forbidding Trespass*** authored by Gerri Cook. Mr. Andrew Smith, who was also coincidentally one of the individuals in the office during the time of the eavesdropping discussion, accompanied the officer as a witness as he served Mr. Milligan.

Plaintiff (Mr. Milligan) personally eavesdropped on a conversation between her (Ms. Mankey) and another leasing consultant (the White Male). Therefore, under Federal Rules of Evidence, Rule 803(1) "present sense impression", this statement should be admissible. Furthermore, Ms. Mankey's statement, "I called Gerri from her boat....." refers to her (Ms. Mankey's) conversation with Gerri Cook as Gerri Cook gave Ms. Mankey specific instructions NOT to give Mr. Milligan any documents contained in his rental file UNLESS the document had Mr./Mrs. Milligan's signature on them. Ms. Cook's instructions to only render documents with the Milligans' signature(s) on them prove their (Defendants') **INTENT** to conceal and not disclose the fraudulently obtained Court ordered judgment. Defendant's (Woodside's) response to the HUD/Virginia State Fair Housing investigator stated Defendant's position on Plaintiffs' receipt of documents.

Defendants' (Woodside Staff Member, Rachael Mankey's) reference to Plaintiff (Mr. Milligan) as a "***Nigger***" **emphasis added**, is in violation of the Federal Fair Housing Act, 42 USC §3604(c) (.....discriminatory advertising, statement, and notices) and in violation of the State Fair Housing Act pursuant to the Code of Virginia § 36-96 *et seq*. Defendants' response to the HUD/Virginia State Fair Housing Office to the allegations of the *discriminatory advertising, statement, and notices* is that "Rachael Mankey's husband is African American." Plaintiffs state that just because Defendant's husband is an African American or Black, doesn't exempt or diminish Defendant's inclination or capacity to refer to Blacks or African American as "***Niggers***". Defendant (Rachael Mankey, who is White) was talking to another White staff member, so it would not be out of character for Defendant (Rachael Mankey) to refer to Blacks or African Americans as "Niggers" around people who may look, think, or act like her. Remember Senator Trent Lott at Strom Thurmond's birthday party? The two of them, at one point in each of their lives, thought alike, acted alike, and they both look alike as they are White, and they're both males.

The Virginia State Fair Housing investigator's specific respondent to the allegations, an African male, also said that he has never heard Mankey use racial slurs. Plaintiffs state that just because specific respondent has never heard Defendant (Rachael Mankey) use racial slurs doesn't mean Defendant (Rachael Mankey) has never used

racial slurs. Defendant (Rachael Mankey, a White Female), would be less likely to use a racial slur around specific respondent, George Williams, who is a Black African who stands nearly 6 feet tall. Defendant's husband (Rachael's husband), who is Black, also may not have ever heard Mankey use racial slurs. Additionally, Defendant has an incentive to lie about the use of the racial slur "***Nigger***" ***emphasis added,*** when facing serious allegations of discriminatory advertising, statement, and notices. Defendants have already shown a total disregard for the law, the Courts, and the investigative process as demonstrated by Defendants' fabrication of the truth, concealment/non-disclosure of records, and Defendants inability to legitimately prove beyond reasonable doubt any of their allegations they've made against Plaintiffs.

Furthermore, Defendant and the specific respondent to the Virginia Fair Housing Office investigator, George Williams, has stated to Plaintiffs how he is afraid of "retaliation" if he were to participate in a fair housing investigation or inquiry and testify on behalf of the Plaintiffs. Furthermore, Plaintiff (Mr. Milligan) maintains the conversation he heard between Rachael Mankey and the White Male leasing consultant on Saturday, July 7, 2001, happened just as they are detailed in the statement above.

The statement above also encompasses a small portion of the Plaintiffs' allegations of Defendants' prohibited practices of discriminating against person(s) in terms, conditions, privileges, and services or facilities.

When Defendant "served" Mr. Milligan with a ***Notice Forbidding Trespass***, Plaintiff was prohibited from using the pool, gymnasium, and from enjoying the ambiance of the public clubhouse TV/lounge area that Plaintiffs enjoyed and visited.

Other examples of Plaintiffs' complaint of Defendants prohibited practices of discriminating against person(s) in terms, conditions, privileges, and services or facilities is Defendant's refusal to accept checks as payment for rent. During Plaintiffs' final 5 months of residency at Woodside Apartments, they (Plaintiffs) were not allowed to write checks for rent payment and Plaintiffs were forced to pay with money order or cashiers' check. This is in violation of the Federal Fair Housing Act, 42 USC §3604(b) and in violation of the State Fair Housing Act pursuant to the Code of Virginia § 36-96 *et seq*. In the HUD/Virginia State Fair Housing Office investigation case summary, finalized September 13, 2002, Defendant responded....."it is their written policy to not accept a tenant's personal check after they [tenants] have written two [2] bad checks." On several different occasions after Plaintiffs received notice from Defendant that they (Defendant) would no longer accept personal checks from Plaintiff, Plaintiffs made inquiries in person and were told by Defendant [Torey Ossman] that it was at the Property Managers' discretion as to accept personal checks from tenants. Plaintiffs responded by asking the Defendant to

provide that policy in writing or show that written policy. Defendant failed to provide that policy.

Plaintiffs have written a total of 15 checks AFTER their second check was returned for non-sufficient and have had at least 1 lease renewed by Defendant since the return of their second check. Plaintiffs' second check was returned for non-sufficient funds on February 11, 2000 and Plaintiffs were not restricted from writing checks after their second check was returned for non-sufficient. Defendants stated on page 2, paragraph 2 of the Virginia State Fair Housing investigation case summary that their **WRITTEN** policy is not to accept checks after 2 returned checks. Defendant also states that the "Written" policy is enforced across the board. Plaintiffs maintain that there WAS no written policy during their (Plaintiffs') residency at Woodside. Plaintiffs inquired several times regarding the limit of returned checks and the excess legal fees and late charges for returned checks and every time Defendants told Plaintiffs that the legal fees and late charges regarding returned check and the limit of returned checks were all at the discretion of the property manager. Subsequently, Defendants could not provide in WRITING the policy regarding excess legal fees and non-sufficient funds and returned checks limits.

Plaintiffs can prove that **ONLY 3 checks were returned for non-sufficient funds** during the ENTIRE 8 years of residency at Woodside. Plaintiffs rendered a total of 93 payments to Woodside Apartments and out of those

93 payments, ONLY 3 checks were returned for non-sufficient funds. They were:

Check #322, dated September 5, 1996 in the amount of $798.00

Check #1451, dated February 5, 2000 in the amount of $963.64

Check #1785, dated May 5, 2001 in the amount of $1055.32

Notice, Plaintiffs' second non-sufficient funds returned check was dated February 5, 2000 and was returned from the bank on February 11, 2000. Plaintiffs were allowed to write an additional 15 more checks AFTER their second non-sufficient funds returned check. That's 1 full year and 3 months of being allowed to write checks AFTER the Defendants' "across-the-board enforcement" of its **WRITTEN** policy.

It wasn't until after the Plaintiffs wrote their third non-sufficient funds returned check 15 months later when the Defendant wanted to "enforce" their "across-the-board" policy. The "enforcement" of this "written" policy after 15 months was nothing more than harassment and tactics used to justify Defendants' receipt of payment as "late" as Defendant logged the payment into their computer as late. Logging the "late" payments into Defendants' computer would provide basis for the impending eviction which was to be later imposed by way of Defendant not renewing Plaintiffs' lease. Furthermore, the Defendants' alleged late receipt of payment from Plaintiffs would eventually be

reported to the appropriate credit reporting agencies as "delinquent". This would in-turn create additional hardships and embarrassment and humiliation for the Plaintiffs.

Additionally, this "enforcement" of this "written" policy after 15 months was also applying different, stringent, and difficult payments requirements on Plaintiffs, thus violating Federal Fair Housing Act, 42 USC §3604(b) and in violation of the State Fair Housing Act pursuant to the Code of Virginia § 36-96 *et seq*. This violation of Federal Fair Housing Act, 42 USC §3604(b) (terms and conditions on the basis of Race), violation of the State Fair Housing Act pursuant to the Code of Virginia § 36-96 *et seq,* and violation of Federal Fair Housing Act, 42 USC §3604(c) (notices and statements on the basis of Race), and violation of the State Fair Housing Act pursuant to the Code of Virginia § 36-96 *et seq* were all part of the overall ultimate plan to evict Plaintiffs and thus constitute a violation of Federal Fair Housing Act, 42 USC §3604(a) (refusal to rent on the basis of Color) and constitute violation of the State Fair Housing Act pursuant to the Code of Virginia § 36-96 *et seq*.

Defendant states to the HUD/Virginia State Fair Housing Office investigator through its case summary dated September 13, 2002 that the reason for Plaintiffs' lease not being renewed is "because of repeated late rental payments and because of Mr. Milligan's harassment of [the] office staff." Plaintiffs "questioned" the repeated late

payments from a previous denial of lease renewal letter they received from Defendant and Plaintiffs were told by 2 different Woodside Management Office staff members (Rachael Mankey and Torey Ossman) that there were 7 late payments in the entire 8 years, and then told by another staff member that there were 8 late payments during the entire 8 years at Woodside. Plaintiffs questioned what constitutes "late" payments and they were told the payments were considered late if they are logged into the computer AFTER the 5th day of the month - even if payment was rendered by residents on the 5th day of the month via the deposit drop box. Plaintiffs have receipts of payment from Woodside Management Office that show Woodside's "receipt" of payment differs from that of the date payment was rendered.

Defendant's receipt of "late" payments were in fact caused by Defendant. Plaintiffs would pay rent for the months of June 2001 and July 2001 by check. June's payment for rent was rendered by Plaintiffs to Defendant on June 5 but was returned to Plaintiff by Defendant on June 6 with a memo stating "Due to you (sic) number of returned checks payment must be in the form of certified check or money order." The memo has a due date of June 7 for the avoidance of late/legal fees. Plaintiffs resubmitted payment for June's rent on June 6. Defendant would log payment for June as "late" as they would enter it into the computer after the 5th day of the month. Defendant would use this "log in" date to justify late payment of rent and

Defendant would also report this late payment to the Courts and ultimately to the credit reporting agencies. Defendant tried the same tactic with July's payment. Plaintiff submitted July's rent payment in the amount of $1061.83 (one thousand sixty-one and eighty three cents) on July 5th 2001 with a personal check during normal business hours. Defendant returned the check with a memo attached stating "Due to you (sic) number of returned checks payment must be in the form of certified check or money order." Defendants' memo has a due date of July 6 for the avoidance of late/legal fees. Plaintiffs inconvenienced themselves once again took time off from work and went to the bank and got a certified check on July 6. Before Plaintiff (Mrs. Milligan) got back to Woodside's property during normal business hours (before 5:00 pm) Defendant had already attached another harassment memo to the door of the apartment with excessive late fees and legal fees totaling $1113.58 stating Plaintiff failed to pay rent. Plaintiffs went to the housing office for clarification on this issue and were told to "disregard" the memo. Payment was rendered and logged into the computer as "late". A couple of days later, Plaintiffs received the SAME embarrassing memo through the mail. Defendants made it a point to try to publicly humiliate and embarrass Plaintiffs. This was done not only to publicly humiliate and embarrass Plaintiffs, but was a part of the overall racially motivated scheme to evict Plaintiffs.

Plaintiffs cited this illegal practice of receiving payment and "logging" them into the computer on a different day than the date of receipt to the HUD/State of Virginia Fair Housing Investigator, but illegal practices were never investigated as part of the overall complaint. As stated earlier, Plaintiffs were residents at the Apartments for 8 years, which translates to 93 payments. During those 8 years, Plaintiffs were late with rent 7 or 8 times, depending on who's answering the inquiry. Three of those 7 or 8 late payments were as returned checks. After the most recent returned check, May 5, 2001, Defendant refused to accept checks from Plaintiffs and return the check with a memo citing "Due to you (sic) number of returned checks payment must be in the form of certified check or money order." Memo would have a "receive by date" advising Plaintiffs of when money order/cashiers check was due to Management Office. The "receive by date" was always after the 5th day of the month. Plaintiffs would question Defendant as to what Woodside Management's "number" for returned checks would constitute that "returned check" memo. Plaintiffs would receive an answer by subordinate staff members that it was a Property Manager discretionary number for returned checks to constitute a returned check memo. Plaintiffs stated to Management that the policy is not in compliance with Federal Fair Housing Act, 42 USC §3604(b) (terms and conditions). Plaintiff (Mr. Milligan) was labeled as a

troublemaker and was treated with hostility by all staff members as he made reference to the violation.

Consequently, as a result of Defendant's alleged violations of the *Federal Fair Housing Act, 42 USC* §3604(a) (b) (c) and the State Fair Housing Act pursuant to the Code of Virginia §36-96 *et seq.*, Plaintiffs seek compensatory damages and punitive damages along with reasonable Attorneys' fees. Plaintiffs seek compensatory damage and punitive damage award for suffering from Defendants' willful infliction of the following Fair Housing Act and Virginia State Fair Housing violations:

a) Refusing to renew Plaintiffs' lease on the basis of Race, as inferred as Defendant (Rachael Mankey) referred to Plaintiff as a ***Nigger*** **(emphasis added)** during a conversation with another staff member;

b) Defendant's (Rachael Mankey) statement as she referred to Plaintiff as a ***Nigger*** **(emphasis added)** during a conversation with another staff member;

c) Defendants' application of different terms and conditions on Plaintiffs by refusing to accept checks as a negotiable instrument for rental payments;

i) Defendants' racially motivated decision for non-renewal of lease caused Plaintiffs to search for alternative housing after dwelling there for 8 years; this caused an undue burden on Plaintiffs and Plaintiffs' 2 school-aged children.

ii) Defendants' racially motivated decision for non-renewal of lease caused Plaintiffs to bear the heavy expenses of renting a moving company and associated moving material

as well as caused Plaintiffs to rent storage space until they could find dwelling.

iii) Defendants' racially motivated decision for non-renewal of lease caused Plaintiffs public humiliation and embarrassment.

iv) Plaintiff (Mrs. Milligan) begged and pleaded with Woodside Management to allow her and her family (2 school-aged children and husband) to stay in the apartment UNTIL after Defendant removed the fraudulently imposed negative judgement from Plaintiffs' credit reports. Management emphatically denied the request.

v) Plaintiffs were FORCED to apply and qualify for apartments/housing with a frequently imposed judgment on their credit report. This immensely impacted their credit rating and ultimately, impacted the type of apartment/house Plaintiffs would qualify for.

vi) Plaintiffs suffered depression and mental anguish from the rejection they received as a result of the negative and erroneous credit reporting by Defendant.

vii) Plaintiffs suffered disappointment and disparity as they were unable to qualify for apartment or home in a more desirable location.

viii) Plaintiffs' 2 school-aged children suffered low self-esteem and a drop in academic performance as a result of Defendant's evicting Plaintiffs as the children were forced to enroll in a lower-ranked school.

ix) Plaintiffs suffered a loss in productivity at work as Mrs. Milligan would literally cry at work as a result of the

racially motivated eviction. Mr. Milligan had difficulties maintaining focus on an assignment and as a result was terminated due to "lack of performance" and "under performing". As a result, Mr. Milligan lost his desire to look for work and lost his desire to compete for the more competitive jobs in which he qualified for thinking he would also be discriminated against with employment.

x) Plaintiffs suffered emotional distress and mental distraction from the involvement in litigating this case and the lengthy process took its toll on Plaintiffs.

xi) Plaintiffs suffered familial stress and strain and constantly pointed the blame on one another. Plaintiffs' 2 school-aged children were beginning to think their family was breaking up (i.e. divorce) as the stress and strain took its toll on them.

xii) Plaintiff (Mrs. Milligan) loss her desire to clean and decorate the new apartment because of the infestation of pests.

xiii) Plaintiffs were forced to accept a two bedroom apartment at a complex when they actually qualified for and NEEDED a three bedroom apartment at another complex. The "malicious and fraudulent" negative derogative information on their credit reports "disqualified" them from the much desired 3 bedroom apartment they really wanted.

xiv) Plaintiff (Mr. Milligan) felt less than a man as he felt "helpless" with defending his family from the discrimination they faced from Defendants. Mr. Milligan

had to explain to his 7 year old son what they were (are) going through as it related to dwelling location and school district.

xv) Co-workers and school-mates noticed overall general decline in Plaintiffs' and children's mental health, attentiveness, ability to concentrate, and overall physical health as Plaintiffs and children constantly worried and talked about being discriminated against.

xvi) Plaintiffs became isolated, withdrawn, and suffered from loss of sleep from worrying about the discrimination.

xvii) Plaintiffs became sexually impotent and loss their desire for one another from the anxiety, stress, "finger-pointing" associated with being discriminated against on anything of this magnitude.

xviii) Plaintiffs have become dis-trusting of others for fear that they may want to harm them (i.e. discrimination or cause malicious damage) on the basis of skin color/race.

xiv) Plaintiffs tend to view more incidents now as race-related and therefore have developed a phobia and will need counseling even after the resolution of this dispute.

III & IV Illegally Obtaining Credit Reports Under False Pretenses and Fair Credit Reporting

References:

a) Page 7 of the Court's Memorandum of Opinion, dated January 28th, 2003, which authorizes Plaintiffs to Replead an Amended Complaint against the above named Defendant(s).

b) HUD/Virginia State Fair Housing Office Complaint, submitted February 4, 2002.

c) **Fair Credit Reporting Act**

15, USC Chapter 41, Subchapter III, § 1681

15, USC Chapter 41, Subchapter III, § 1681(b) "Permissible Purpose"

15, USC Chapter 41, Subchapter III, § 1681(e) "Compliance Procedures"

15, USC Chapter 41, Subchapter III, § 1681(g) "Disclosure to Consumer"

15, USC Chapter 41, Subchapter III, § 1681(m) "Requirements on Users of Consumer Reports"

15, USC Chapter 41, Subchapter III, § 1681(o) "Civil Liability for Negligent Non Compliance"

15, USC Chapter 41, Subchapter III, § 1681(q) "Obtaining Information Under False Pretenses"

As stated previously on this Complaint and on the HUD Complaint, Defendant caused undue malicious process with an unjustifiable civil lawsuit in Fairfax County District Court. Also stated, Defendant deliberately reported erroneous late payments to the 3 major credit reporting agencies and another apartment credit reporting agency called First American Registry. After Defendant caused undue judicial process on Plaintiffs on May 11, 2001 and after Defendant deliberately reported erroneous late rental payments to the credit agencies, Defendant had to verify all of the derogative and negative information was posted on the various credit reports.

Defendant had to verify the negative and derogative information was posted on the various credit reports as Plaintiffs allege Defendant purposefully intended to do permanent damage to Plaintiffs' credit worthiness just before the eviction in an effort to minimize or eliminate the possibilities of acquiring an apartment or acquiring a mortgage and becoming home owners.

Plaintiffs allege Defendants processed an apartment (A Woodside Apartment) application on behalf of Johnny L. Milligan as verified by First American Registry Scorex (a FICO Credit Score Analysis for apartments) and verified by First American Registry Staff via phone call. On May 16, 2001 at approximately 18:07 (6:07 pm), Defendant (Woodside Management/Staff Members) used their assigned Registry Scorex Account Number 12240 to generate the Scorex score sheet for Plaintiff (Mr. Johnny L. Milligan).

The Registry Scorex sheet shows invoice no. 14066124, Member Name as Woodside Apartments, with Plaintiff's (Mr. Milligan's) SSN (Social Security Number) used as "applicant's" SSN. At the time of the generation of the Scorex, said "applicant" or Plaintiff (Mr. Milligan) was in fact residing at the residence which he "applied" for. The Scorex shows a score of 212. Woodside's minimum qualification score at the time of application was 160. If Plaintiffs had had prior knowledge of this "application" and its "qualifying" score of 212, Plaintiffs would still be residing at Woodside under the "qualifying" application.

Defendant fraudulently obtained an Equifax credit report as requested by Defendant (Woodside Staff) on May 16, 2001. Confidential bankruptcy credit information was extracted from the Equifax report and then reported to another CRA, First American Registry by Defendant. Defendant (Woodside Staff) extracted the Plaintiffs' bankruptcy information from Mr. Milligan's fraudulently requested Equifax credit report and posted a "bankruptcy warning note" on the First American Registry "Scorex" report.

The fraudulently obtained Equifax credit report was also used to "create" a fictitious "Milligan" application for a Woodside Apartment. The "fictitious" Milligan application generated a report called "Registry Scorex" from the First American Registry CRA. The Registry Scorex calculated the "credit score" or "risk score" of 212, which was to be used as a "predictor" score for the fictitious Milligan application. This Scorex report indicates the processing of an application for apartment dwelling and is used to determine credit-worthiness for rent-payment ability. Plaintiffs are familiar with this report as Plaintiffs were forced to apply for several different apartments. Surprisingly, the Plaintiffs qualified for the fraudulent apartment under Defendants qualification standards, however, the application was denied by Defendants because of:

Credit Report (albeit the majority of negative information which impacted Plaintiffs was "forced" by Defendant) First American Registry Report Application Data (Plaintiff never

provided data; data was taken from rental records already on file)

The Plaintiffs did not initiate this "application" nor did the Plaintiffs have any knowledge of this fraudulently forged application and the contents thereof. The Plaintiffs had no need to initiate a new application for dwelling at Woodside because the Plaintiffs were already 8-year residents of Woodside. Plaintiffs continued residency at Woodside was contingent upon annual lease renewals, not new applications. Plaintiffs discovered the credit report inquiries and "fraudulent" application as Plaintiffs applied for other apartments as they needed to review their credit reports for credit-worthiness.

Finally, Woodside Staff had to initiate the fraudulent credit report request with the unauthorized use of Mr. Milligan's Social Security Administration Number (SSAN). This is an invasion of privacy and Identity Theft. All of the allegations listed in this section can be found in the complaint to HUD/Virginia State Fair Housing Office.

Consequently, as a result of Defendant's alleged violations of the Fair Credit Reporting Act, 15 USC §1681(b) Permissible Purpose and 1681(o) Civil Liability for Negligent Noncompliance

a) Defendant willfully and without regard for the law received without permission from either Plaintiffs received credit reports as well as maliciously furnished deliberate derogatory information to various credit reports of Plaintiffs.

b) Defendant acted in bad faith, Defendants actions were racially motivated and for the purposes of harassment of Plaintiffs.

c) Defendants falsified information and furnished it to the credit reporting agencies with the willful intent to cause damages to Plaintiff's credit ratings and with malice.

d) Plaintiffs seek maximum compensatory award and maximum punitive award for Defendants' action.

e) Plaintiff suffered by not having a more favorable credit rating which in-turn caused Plaintiffs to accept sub-standard and pest-infested housing.

f) Plaintiffs also suffered by having to render a larger security deposit as Plaintiffs were considered not credit-worthy.

g) Plaintiffs suffered tremendous public humiliation and embarrassment.

h) Plaintiffs were FORCED to apply and qualify for apartments/housing with a fraudulently imposed judgment on their credit report. This immensely impacted their credit rating and ultimately, impacted the type of apartment/house Plaintiffs would qualify for.

i) Plaintiffs are still suffering from depression and mental anguish from the rejection they received as a result of the negative and intentional malicious credit reporting by Defendant.

j) Plaintiffs still suffer from a loss in productivity at work as Mrs. Milligan would literally cry at work as a result of the racially motivated eviction. Mr. Milligan has difficulties maintaining focus on an assignment and as a result was terminated due to "lack of performance" and "under performing". As a result, Mr. Milligan lost his desire to look for work and lost his desire to compete for the more competitive jobs in which he qualified for thinking he would also be discriminated against with employment.

VII Breach of Contract

References:

a) Page 10 of the Court's Memorandum of Opinion, dated January 28th, 2003, which authorizes Plaintiffs to Replead an Amended Complaint against the above named Defendant(s).

b) Virginia Lease Agreement between Johnny and Carolyn Milligan and Equity Residential Properties Management Corp, dated September 7, 2000 and terminated/expired September 7, 2001.

Virginia Lease Agreement, Section 3, Security Deposit paragraph 4, states in part, Interest shall accrue.....at 5% per annum. Plaintiffs resided at property from October 1993 until September 2001. Plaintiffs were entitled to a return on a $100.00 deposit. $100.00 for eight years at 5% simple interest calculates to $40.00. Defendants calculated the interest at $0.40 (forty

cents). Plaintiffs maintain that the Defendants calculations were deliberate and purposefully miscalculated to cause stress and mental anguish. Plaintiffs spoke with the Defendants via phone after Plaintiffs discovered the miscalculations. Defendants refused to correct the miscalculation. Plaintiffs maintain that the Defendants refusal to refund all monies due is done so with malicious and deliberate intent.

Virginia Lease Agreement, Section 29, LIABILITY FOR PERSONAL OR PROPERTY DAMAGE final sentence, states in part, "Owner shall not be liable for any injury.....unless such injury or damage is committed deliberately and with malice....." Plaintiffs claim all of the listed actions from the fraudulent eviction, perjury, falsifying of records, withholding vital records, and even withholding the $40.00 (actually, $39.60) accrued interest was done with malicious, with intent to do harm, racially motivated, and an overall dislike for Plaintiffs.

As a direct and proximate result of Defendant's actions against Plaintiffs, Plaintiffs have suffered and continue to suffer damages as described throughout this Complaint in excess of $5,000,000.00 (Five Million Dollars).

DEMAND FOR RELIEF

WHEREFORE, Plaintiffs pray for Judgment against Defendant in compensatory in the amount of $2,000,000.00 (Two Million Dollars) and punitive damages in the amount

of $3,000,000.00 (Three Million Dollars), together with reasonable attorney's fees, costs, and interest.

Dated:_____

/s/ William S. Stancil, Esq
VA State Bar No. 29616
1717 K Street, NW
Suite 600
Washington, DC 20036
202-508-1042

JURY DEMAND

NOW COMES Plaintiffs and demand a trial by jury in the above matter.

Dated:_____

/s/ William S. Stancil, Esq

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No. 03-2004

FILED:
November 7, 2003

JOHNNY MILLIGAN; CAROLYN MILLIGAN,

Plaintiffs – Appellants,

versus

EQUITY RESIDENTIAL PROPERTIES TRUST; EQUITY RESIDENTIAL; WOODSIDE APARTMENTS; EQUITY RESIDENTIAL PROPERTIES MANAGEMENT CORPORATION; EQR WOODSIDE VISTAS, INCORPORATED,

Defendants – Appellees.

ORDER

Upon review it is ORDERED that the Appellees' motion to dismiss is GRANTED.

Entered at the direction of Judge Michael, with the concurrence of Judges Widener and Traxler.

FOR THE COURT

/s/ PATRICIA S. CONNOR
Clerk

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

JOHNNY MILLIGAN and
CAROLYN MILLIGAN

Plaintiffs,

v. Civil Action No. 02-1709-A

EQUITY RESIDENTIAL PROPERTY,
ET AL.,

Defendants.

ORDER

Upon review of the record and for the reasons stated in the Defendants' brief, it is hereby ORDERED that:

(1) Plaintiffs' Motion for Relief of Judgment for Mistakes, Fraud, and Fraud Upon the Courts is DENIED'

(2) Should Plaintiffs wish to appeal, they shall file their notice of appeal within thirty (30) days of the date of entry of this Order; and

(3) The Clerk of the Court shall forward copies of this Order to all counsel of record.

February 26th, 2004
Alexandria, VA

/S/ USDC JUDGE

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 04-1263

JOHNNY MILLIGAN; CAROLYN MILLIGAN,

Plaintiffs – Appellants,

versus

EQUITY RESIDENTIAL PROPERTIES MANAGEMENT CORPORATION; EQUITY RESIDENTIAL PROPERTIES; EQR WOODSIDE VISTAS, INCORPORATED,

Defendants – Appellees,

and

EQUITY RESIDENTIAL PROPERTIES TRUST; WOODSIDE APARTMENTS,

Defendants.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. James C. Cacheris, Senior District Judge. (CA-02-1709)

Submitted: April 15, 2004 Decided: April 22, 2004

Before NIEMEYER and GREGORY, Circuit Judges, and HAMILTON, Senior Circuit Judge.

Affirmed by unpublished per curiam opinion

Johnny Milligan, Carolyn Milligan, Appellants Pro Se. James Alwin Murphy, Cameron Scott Matheson, LECLAIR RYAN, PC, Richmond, Virginia; Rebecca Everett Kuehn, LECLAIR RYAN, PC, Alexandria, Virginia, for Appellees.

Unpublished opinions are not binding precedent in this circuit. See Local Rule 36(c).

PER CURIAM:

Johnny and Carolyn Milligan appeal from the order if the district court denying their motion for relief from judgment filed pursuant to Fed. R. Civ P. 60(b)(3). Finding no error, we affirm.

This court reviews the denial of a motion for relief from judgment pursuant to Rule 60(b) for an abuse of discretion. Heyman v. M.L. Mktg. Co., 116 F.3d 91, 94 (4th Cir. 1997). To succeed on a Rule 60(b) motion, a movant first "'must show that his motion is timely, that he has a meritorious defense to the action, and that the opposing party would not be unfairly prejudiced by having the judgment set aside.'" National Credit Union Admin. Bd. V. Gray, 1 F.3d 262, 264 (4th Cir. 1993) (quoting Park Corp. v. Lexington Ins. Co., 812 F.2d 894, 896 (4th Cir. 1987)). After meeting these three threshold considerations,[1] the movant must then satisfy one of the six grounds for relief listed in Rule 60(b). Id. at 266. The Milligans alleged fraud and misconduct as the basis for relief.

Despite the Milligans' repeated claims to the contrary, our review of the record fails to disclose evidence of the fraud or misconduct claimed by the Milligans. Accordingly, we conclude that the district court did not

[1] A showing of "exceptional circumstances" sometimes is noted as a fourth threshold. See National Credit Union, 1 F.3d at 264 (citing Werner v. Carbo, 731 F.2d 204, 207 (4th Cir. 1984)).

abuse its discretion in denying the Milligans' motion for relief from judgment. We affirm the judgment of the district court.[2] We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED

[2] To the extent the Milligans again seek to appeal the district court's orders dated March 14, 2003, and June 19, 2003, their March 1, 2004, notice of appeal is not timely. Thus, we have no jurisdiction to review those orders. See Fed. R. App. P. 4(a).

JUDGMENT

Filed: April 22, 2004

UNITED STATES COURT OF APPEALS
For the
Fourth Circuit

No. 04-1263
CA-02-1709

JOHNNY MILLIGAN; CAROLYN MILLIGAN,
Plaintiffs – Appellants,

v.

EQUITY RESIDENTIAL PROPERTIES MANAGEMENT CORPORATION; EQUITY RESIDENTIAL PROPERTIES; EQR WOODSIDE VISTAS, INCORPORATED
Defendants – Appellees,

and

EQUITY RESIDENTIAL PROPERTIES TRUST; WOODSIDE APARTMENTS
Defendants

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria

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In accordance with the written opinion of this Court filed this day, the Court affirms the judgment of the District Court.

A certified copy of this judgment will be provided to the District Court upon issuance of the mandate. The judgment will take effect upon issuance of the mandate.

/s/ Patricia S. Connor
CLERK

THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

United States Courthouse
1100 East Main Street, 5th Floor
Richmond, Virginia 23219-3517

4th Circuit Court of Appeals
Current Appeal File No. 04-1263
Prior Appeal File No. 03-2004

JOHNNY L. MILLIGAN, and CARQLYN A. MILLIGAN Plaintiffs - Appellants, v. EQUITY RESIDENTIAL PROPERTIES, et al Defendants – Appelees	Civil Action No. 02-1709-A Appealed from the US District Court for the Eastern District – Alexandria, VA Judge James C. Cacheris

APPELLANTS' PETITION
FOR REHEARING EN BANC
In Accordance With
Federal Rules of Appellate Procedures 35

PURPOSE STATEMENT:

1. This en banc appeal is to seek answers to questions of exceptional importance concerning equity jurisprudence and mixed questions of law and historical facts.

2. This en banc appeal is to direct the Court's attention to overlooked material facts and equally governing laws which are not reflected in the ***Opinion***.

3. This en banc appeal is to notify the Court that this ***Opinion*** is in direct conflict with decisions of the US Supreme Court, several Appeals Courts, and several US District Courts regarding laws of equity jurisprudence.

Table of Evidence (Proof of Facts)

As Taken From the Evidence Binders

Tab D (1 pg).....Proof of Rental Record Audit

Relates to ***Question of Law*** question #2

Tab C (pg 3 of 18)...Proof of Equity's Judgment

Relates to Material Fact Purpose #1

Tab H (2 pgs).....Proof of Judgment Set-Aside

Relates to Material Fact Purpose #2

Tab A (4 pgs).....Proof of Payment of April's Rent

Relates to Material Fact Purpose #3

Tab B (pg 2 of 22)....Proof of May 2001

Rental Payment

Relates to Material Fact Purpose #5

Tab B (pg 3 of 22)...Proof of June 2001

Rental Payment

Relates to Material Fact Purpose #5

Tab B (pgs 5, 7 & 8 of 22)...Proof of July 2001

Rental Payment

Relates to Material Fact Purpose #5

Tab B (pgs 9, 10 & 11 of 22)...Proof of August

2001 Rental Payment

Relates to Material Fact Purpose #5

Tab B (pgs 16, 17 & 19 of 22)....Proof of

September 2001 Rental Payment

Relates to Material Fact Purpose #5

QUESTIONS OF LAW

Question 1. With respect to the 14th Amendment of the Constitution, and the *res judicata* case file number CFN-2001009741, *Equity Residential Properties Trust M/A Woodside Apartments v. Milligan, Jonny (sic) and Milligan, Carolyn*, May 11th 2001, Fairfax General District Court, Fairfax, Virginia, did Equity Residential violate Due Process Law by not serving the Milligans with the post-judgment notice after the award of possession of property on May 11, 2001?

> **Rationale for Question 1**: Traditionally, due process is accorded by the courts where one's "life, liberty or property" are being deprived. Due process sometimes afford a post-hearing after the deprivation of property, rights and privileges in an effort to offer the opportunity to re-instate the deprivation if the deficiencies have been corrected. The Milligans never knew of the judgment, even though the deficiencies were corrected prior to the hearing, until after they applied for houses and were turned down because of a judgment. "What due process of law means in the procedural context depends on the circumstances. It varies with the subject matter and the necessities of the situation. Due process of

law which, following the forms of law, is appropriate to the case and just to the parties affected."[1] After commencement of the suit on/or about April 17, 2001, Equity Residential (plaintiffs) agreed to dismiss the suit if all monies and rent were paid prior to the court date. When monies were paid by the Milligans (defendants) before the court date, and if Equity Residential still had grounds to sue for possession, then Equity had a duty to inform the Milligans and the Court that the suit would still go forward and upon what grounds the suit would go forward. Thus, due process was violated after the suit went forward in its original form after the Milligans settled the debt under the grounds the suit was initiated.

Question 2. With respect to historical facts of the *res judicata* case file number CFN-2001009741, *Equity Residential Properties Trust M/A Woodside Apartments v. Milligan, Jonny (sic) and Milligan, Carolyn*, May 11th 2001, Fairfax General District Court, Fairfax, Virginia; and the undisputed rule of law of ***assertions having evidentiary support***, this is a mixed question of law and historical facts.

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[1] **Procedural Due Process: Civil** (of the US Constitution) *quoting* **Hagar v. Reclamation Dist.**, 111 U.S. 701, 708 (1884); **Hurtado v. California**, 110 U.S. 516, 537 (1884)

The legal proceedings *Equity v. Milligan* (the Fairfax case) was **initially** terminated in favor of Equity Residential, however, the basis in which the judgment was rendered was not proper because the Milligans paid all rent prior to the return court date. The question is, should Equity Residential have updated the record to reflect their receipt of the two payments made by the Milligans before accepting the judgment?

Rationale for Question 2: Fed R. Civ Proc 11(b)(3) states all assertions must have evidentiary support before trial, at trial, **or after a reasonable period for discovery**. On May 10, 2001, Equity Residential performed an audit on the Milligans' rental account and found a discrepancy of only $5.00 (five dollars). Evidence to support the audit or "discovery period" is located as Tab D in any evidence binder. A copy of the audit showing the discrepancy of $5.00 is also attached to this *Motion.* Equity Residential's final judgment was totally based on unpaid rent in the amount of $1035.00, but since the Milligans paid all rent prior to the court date, Equity provided false evidence to support an award of $1035.00 and possession judgment based on unpaid rent. Equity thus accepted a

judgment based on falsely asserted facts. Receipts of payments and copies of the money orders used to pay the rent are attached to this FRAP 35 *Motion*.

Supplemental Question: Since Equity Residential did not update the record to reflect receipt of payment, yet accepted the judgment in its original form (based totally on non-payment), does the acceptance under these illegitimate premises constitute fraud upon the court? Keep in mind the Supreme Court's definition of fraud as "**a misrepresentation or concealment of *material* fact**".

OVERLOOKED MATERIAL FACTS

1. First purpose of this FRAP 35 *Motion* is to direct the Circuit Court's attention to the overlooked material facts in the *res judicata* case file number CFN-2001009741, *Equity Residential Properties Trust M/A Woodside Apartments v. Milligan, Jonny (sic) and Milligan, Carolyn*, May 11th 2001, Fairfax General District Court, Fairfax, Virginia. This evidence in the form of court records, along with surrounding circumstances and particularly stated facts, is the primary evidence and proof of alleged violations of Fed R. Civ Proc 11(b)(3) and other alleged misconduct, i.e. fraud upon the court. A copy of page 3 (the signed Fairfax judgment order) of this 18-page case reference is attached to this *Motion* for the benefit of

all concerned. The entire 18-page reference can be found at Tab C in any evidence binder already provided to the Courts and Defendants. Additionally, a copy of the 2-page judgment set-aside order from the May 11th Fairfax Court, dated and signed August 13th 2001, is attached to this *Motion* for all concerned. The 2-page set-aside order has been previously provided to the Courts and Defendants and is located at Tab H in any evidence binder.

2. Second purpose of this FRAP 35 *Motion* is to direct the Circuit Court's attention to the overlooked 2-page judgment set-aside order from the May 11th Fairfax Court, dated and signed August 13th 2001. This evidence, also in the form of court records, along with surrounding circumstances and particularly stated facts, is the primary evidence and proof of fact that the judgment, which was procured by Equity Residential with evidence which was later proven false, was ultimately set-aside and overturned in the Milligans' favor. A copy of this 2-page judgment set-aside is attached to this *Motion* for the benefit of all concerned. The 2-page set-aside order has been previously provided to the Courts and Defendants and is located at Tab H in any evidence binder.

3. Third purpose of this FRAP 35 *Motion* is to direct the Circuit Court's attention to the overlooked receipts of payment for April 2001 rent Equity Residential (Plaintiffs in the Fairfax action) alleged weren't paid. The Milligans' attorney used this evidence as proof of payment

of April's rent to get the Fairfax judgement set-aside. A copy of these 4 pages of receipts is attached to this *Motion* for the benefit of all concerned. These 4 pages of receipts have been previously provided to the Courts and Defendants and are located at Tab A in any evidence binder.

4. Fourth purpose of this FRAP 35 *Motion* is to direct the Circuit Court's attention to the US Supreme Court's definition of fraud as it pertains to the *res judicata* case file number CFN-2001009741, *Equity Residential Properties Trust M/A Woodside Apartments v. Milligan, Jonny (sic) and Milligan, Carolyn*, May 11th 2001, Fairfax General District Court, Fairfax, Virginia. The Supreme Court's "well-settled, common law meaning of 'fraud' is "**a misrepresentation or concealment of *material* fact.**" (***Neder v. United States***, No. 97-1985, US Supreme Court (June 10, 1999)) (See also ***Chambers v. NASCO, Inc.***, 501 US 32, US Supreme Court (1991); and ***Hazel-Atlas Glass Co., v. Hartford-Empire Co***. 322 US 238, US Supreme Court (1944)) This definition must be used as a standard for review for these allegations of fraud.

5. Fifth and final purpose of this FRAP 35 *Motion* is to direct the Circuit Court's attention to the overlooked fact that **the judgment was not used to evict the Milligans**. The Milligans remained in the apartment until the end of their lease. Applicable receipts of each proceeding monthly rental payment made by the Milligans

after the judgment are attached to this *Motion* for all concerned.

Conflicting Laws of Equity Jurisprudence (The Unclean Hands Doctrine)

1. The Circuit Court's Opinion sets an exceptional and conflicting precedent regarding the laws of fraud and evidentiary showing of fraud in the *res judicata* case file number CFN-2001009741, *Equity Residential Properties Trust M/A Woodside Apartments v. Milligan, Jonny (sic) and Milligan, Carolyn*. In this instant appeal, a ruling of "no evidence" of fraud by this appellate court will fly in the face of reality because the Milligans used the Defendants' own misrepresentations of material fact, the Defendants' own inconsistent sworn testimonies, the Defendants' own fraudulent affidavits and exhibits, and the Defendants' own manufactured evidence against them [the Defendants] to prove alleged facts of fraud.

2. Accordingly, since Equity Residential came into this case with unclean hands from the *res judicata* case *Equity v. Milligan* (the Fairfax action), Equity Residential was not entitled to summary judgment in the USDC case number 02-1709.

ARGUMENT

1. The very purpose of Civ Proc Rule 60 is to promote public confidence in the judicial system through avoidance and/or corrections of mistakes made by virtue of the process. Whenever possible, it is critically necessary to

review the entire record for mistakes and overlooked material facts. The District Court and the Circuit Court overlooked the fact that Equity Residential made a false promise to dismiss the suit if all payments were made by the court date. Additionally, as reflected in the District Court's March 14th Opinion, the Milligans alleged and sustained they had no further obligation to the Defendants' April 17th Fairfax General District Court standing cause of action, which alleged non-payment of rent, after the Milligans made 2 payments totaling $1298.61. Therefore, Equity was bound to at least modify the standing action to reflect receipt of payment. (Refer to pgs 5 & 6 USDC Memorandum of Opinion, March 14, 2003 [Item #20 on the USDC Docket]) (Refer also to pgs 1 through 4 of Exhibit A behind Tab 10 of the Evidence Binder for proof of payments [Item #'s 44, and entry between 49 & 50] on the USDC Docket) (Refer also to pgs 1 through 4 of Exhibit A behind Tab 10 in Evidence Binders at 4th Cir Docket entry entitled: ***Informal appendix filed by Appellant Johnny Milligan, Appellant Carolyn Milligan***, as entered on September 22, 2003 by "cwc" for case number 03-2004)

2. Defendants' Grant of Judgment for "Non-rental Payment" Critically Overlooked:

As reflected in the District Court's March 14th Opinion, the Milligans alleged and the District Court accepted that the "**Defendants were granted a judgment**

in their favor" on May 11, 2001 in the Fairfax action. (Refer to pg 6 USDC Memorandum of Opinion, March 14, 2003 [Item #20 on the USDC Docket]) (Refer particularly to pgs 1 and 3 of Exhibit C behind Tab 10 of the Evidence Binder for proof of Defendant's favorable judgment [Item #'s 44, and entry between 49 & 50] of the USDC Docket) (Refer particularly to pgs 1 and 3 of Exhibit C behind Tab 10 of the Evidence Binders at 4th Cir Docket entry entitled: ***Informal appendix filed by Appellant Johnny Milligan, Appellant Carolyn Milligan***, as entered on September 22, 2003 by "cwc" for case number 03-2004 for proof of Defendant's favorable judgment) Page 3 of Exhibit C, the Summons for Unlawful Detainer, shows the post-judgment order where the presented "evidence of non-payment of rent" was affirmatively acknowledged and used as the basis for award of judgment. The post-judgment order explicitly states "**.....and that the Defendant should be removed based on the following: unpaid rent**", along with other fees and costs as detailed in the Plaintiffs' 105-page and Plaintiffs' 39-page ***Memorandums of Support*** to the USDC and the 4th Cir, respectively. The Defendants' acceptance of the judgment under the false premise of non-payment just one day after thoroughly auditing the Milligans' rental records is simply inexcusable.

3. "Fraud" as defined by the US Supreme Court:

The Supreme Court's definition of fraud is "**a misrepresentation or concealment of material fact.**" (See ***Neder v. US***). Accordingly, the biggest issue with the Defendants' Fairfax judgment is that it was **fraudulently procured under the false premise that the Milligans had not paid rent for the month of April 2001** because Equity Residential deliberately misrepresented the facts of non-payment to the Fairfax court. The true fact is that the Milligans had paid rent for April as reflected in the USDC March 14th Opinion and the accompanying Exhibits in the binder (receipts of payment). The Defendants' "premise" of non-payment was later proven false by the Milligans as the Milligans secured attorney James Pinkowski and proffered receipts of payment to the fact-finder. The fraudulently procured judgment was ultimately reversed in the Milligans' favor. (Refer particularly to Exhibit H behind Tab 10 of the Evidence Binder for proof of judgment set-aside [Item #'s 44, and entry between 49 & 50] of the USDC Docket) (Refer particularly to Exhibit H behind Tab 10 of the Evidence Binders at 4th Cir Docket entry entitled: ***Informal appendix filed by Appellant Johnny Milligan, Appellant Carolyn Milligan***, as entered on September 22, 2003 by "cwc" for case number 03-2004 for proof of judgment set-aside in the Milligans' favor) Fraud is far more than an injury to an individual litigant, [fraud on the court] embraces that species of fraud which does or attempts to, defile the court itself, or is a fraud

perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases presented for adjudication. (***Lehman Bros. v. Masselli***, 1998 WL 53181 *6 (S.D.N.Y.) quoting Hazel-Atlas) "Fraud includes the suppression of the truth, as well as the presentation of false information." (in re: Witt (1991) 145 Ill. 2d 380, 583 N.E. 2d 526, 531, 164 Ill. Dec. 610). "Fraud has been broadly defined as anything calculated to deceive." (in re: Frederick Edward Strufe, Disciplinary case no. 93 SH 100). See ***Hitachi Credit v. Signet Bank***, No. 97-2753 (4th Cir):

> "[c]oncealment of a material fact by one who knows that the other party is acting upon the assumption that the fact does not exist constitutes actionable fraud," (quoting Allen Realty Corp v. Holbert, 318 S.E.2d 592, 597 (Va. 1984).

4. The Review of the Record (for evidence of fraud):

A. Federal Rules of Evidence 103(a) states that once the court makes a definitive ruling on the record admitting or excluding evidence, either at or before trial, **a party need not.....offer [additional] proof to preserve**

a claim of error for appeal. The issue of fraud became a matter of record in the District Court when Plaintiffs introduced the May 11th Fairfax District Case CFN-2001009741. Federal Rules of Evidence 405(b) state that **evidence of misconduct may be sustained / introduced by citing specific instances of the culprit's misconduct directly from the record of admissions already on file**.

B. The District Court's March 14th Memorandum of Opinion states Defendants agreed to dismiss the suit, but Defendants were awarded judgment. The fact that the Defendants agreed to dismiss the suit but were awarded judgment raises an issue of fraud by definition. FRAUD UPON THE COURT BY HAVING FRAUD PRACTICED ON HIM BY FALSE PROMISE TO DISMISS. The Appellate Court must consider the record as a whole and weigh both the evidence that supports and the evidence that detracts from an issue raised.

C. There are two kinds of evidence, circumstantial and direct. More often, evidence establishing fraud is mostly circumstantial and in the form of testimony (written affidavit or oral, i.e. deposition). **Written arguments of "no evidence" by the Defendants' counsel cannot substitute for items admitted for the court record**. Even if the Circuit Court only consider Equity Residentials' sworn admissions in the May 11th Fairfax case, the Court would be justified in reversing the District Courts'

judgments and allowing for full trial on the merits on the basis of unclean hands doctrine.

D. Equity Residentials' violations in this Fairfax action are not trivial and minor, nor are they excusable. Equity Residential has mass legal representation in the states of Virginia and Illinois, their headquarters and somebody should have known that accepting a judgment based on false evidence was against the law. Moreover, providing relief in cases with circumstances such as this will not produce an injustice to the Defendants or in other cases. In fact, the Circuit Court's willingness to enforce the laws of equitable jurisprudence and Rule 60, along with publicizing the Opinion, may prevent other deliberate litigation misconduct in the future by causing a potential violator to weigh his risk of receiving sanctions.

E. In the interest of fairness to both parties, it would be a greater injustice to uphold the District Courts' judgments than to allow Equity Residential to stand trial and defend the merits of their actions in both the Fairfax case and this instant case. It would be a great injustice to sustain a "no evidence" ruling and allow Equity Residential to escape liability from its acceptance of the Fairfax judgment under false pretenses. As Plaintiffs, Equity Residential had an obligated duty to the Courts not to accept the false judgment and to update the information in the record to reflect accuracy. The Milligans as Defendants did not have an obligation to update the record

as the action was initiated and continued by the Plaintiffs. The issue of fairness is even more compelling, especially when the Milligans have offered both circumstantial and direct evidence to support the claim of unclean hands. Justice must appear impartial and fair to all parties involved; "justice must satisfy the **appearance** of justice". (***Liljeberg v. Health Services Acquisition Corp***, 486 US 847 (1988) *quoting* Aetna Life Ins. Co. v. Lavoie) citation omitted.

CONCLUSION

Solid reasoning would justify relief from judgment under Rule 60(b). When considering whether or not it is appropriate to vacate under Rule 60(b), it is prudent to consider the risks of injustice to the parties in the particular case, the risk that denial of relief would produce injustice in other cases, and the risk of undermining public confidence in the judicial process.[2] For the foregoing reasons, we pray the 4th Circuit grant the set-aside and rule in the Milligans' favor. Respectfully submitted for the Court's en banc consideration. Thank You Circuit Court.

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[2] Liljeberg v. Health Services Acquisition Corp., 486 US 847 (1988) (appealed from the 5th Cir)

/s/_____

Johnny L. Milligan and Carolyn A. Milligan
8111 Dumont Dr., #203
Vienna, VA 22180
Johnnylmilligan@aol.com
(703) 645-8187 Home Ph
May 4, 2004

CERTIFICATE OF SERVICE

Plaintiffs – Appellants hereby certify that a copy of this ***FRAP 35 Motion*** was served to defendants' counsel of record by regular USPS Certified Mail on this day, Tuesday, the 4th day of May 2004. Defendants' Tracking No. is 70030500000407257305. This *Motion* was served upon:

Cameron Scott Matheson,
Attorney on Record for the Defendants
Law Firm of LeClair Ryan
707 E. Main St., 11th Flr
Richmond, VA 23219
(804) 783-2003 Ph

NOTICE OF ISSUANCE OF MANDATE

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

June 7, 2004

MANDATE

TO: Clerk, District Court/Agency

FROM: Taline Akseraylian
Deputy Clerk

RE: 04-1263 Milligan v. Equity Residential
CA-02-1709

HEREWITH IS THE MANDATE OF THIS COURT, ISSUED THIS DATE, ON THE JUDGMENT ENTERED BY THE COURT ON 4/22/04.

[ ] Order and Certified Copy of Judgment
[x] Opinion and Certified Copy of Judgment
[ ] Order on Costs
[ ] Order dismissing appeal R42(b) or Local Rule 45
[ ] Other:_____
[ ] The record has been retained for use in case number

cc: James Alwin Murphy
Cameron Scott Matheson
Rebecca Everett Kuehn
Carolyn Milligan
Johnny Milligan

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto.

The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court annexed, if a seal exists, together with a certificate of a judge of the court that the said attestation is in proper form.

Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

Article IV, § I of the US Constitution

Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.